TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 214

JUAN BENGZON, PETITIONER,

vs.

THE SECRETARY OF JUSTICE AND INSULAR AUDITOR OF THE PHILIPPINE ISLANDS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF THE PHILIPPINES

PETITION FOR CERTIORARI FILED JULY 20, 1936.

CERTIORARI GRANTED OCTOBER 12, 1936.

SUPREME COURT OF THE UNITED STATES

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INDEX.

	Page
Proceedings in Supreme Court of Philippine Islands	1
Caption	1
Record from Court of First Instance of Manila	1
Complaint	1
Exhibit "A"—Gratuity Law	4
Demurrer	9
Answer	18
Stipulation of facts	18
Exhibits "A" to "I", inc.—Correspondence	20
Decision, Sison, J.	29
Assignments of error	35
Decision, Malcolm, J.	36
Dissenting opinion, Villa-Real, J.	43
Motion for reconsideration	50
Resolution denying motion for reconsideration	57
Exception and notice of appeal	58
Resolution on notice of appeal	59
Final judgment	59
Clerk's certificate	60
Order allowing certiorari	61

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Record on Appeal to the Supreme Court of the United States

United States of America
Commonwealth of the Philippines

In the Supreme Court of the Philippine Islands

Court of First Instance of Manila, Case No. 46037
Concerning payment of gratuity to Justices of the Peace.

JUAN BENGZON,
Petitioner-Appellant,
– versus –
THE SECRETARY OF JUSTICE AND INSULAR AUDITOR,
Respondents-Appellees.

R. G. No. 42821

APPELLATE JURISDICTION

Be it remembered that, on the dates respectively mentioned, the following proceedings were had in the above-entitled case:

On March 7, 1934, the following complaint was filed with the Court of First Instance of Manila:

(CAPTION AND TITLE OMITTED)

COMPLAINT

Comes now plaintiff-petitioner, by his undersigned attorney, and to this Honorable Court, respectfully states:

I

That plaintiff-petitioner is of legal age, a resident of the municipality of Lingayen, Pangasinan, and an ex-justice of the peace for the municipality of Lingayen, Pangasinan, P. I.

II

That defendants are also of legal age, residents of the city of Manila, duly appointed, qualified and are at present holding the offices of Secretary of Justice and Insular Auditor respectively of the Philippine Islands.

III

That plaintiff was, until about January 15, 1933, the justice of the peace for the municipality of Lingayen, province of Pangasinan, and that by reason of Act 3899, passed by the Philippine Legislature and approved by the Governor-General, the plaintiff-petitioner was forcibly separated from the service as justice of the peace for the said municipality of Lingayen, Pangasinan, P. I.

IV

That on or about February 21, 1933, Act 4051, commonly known as the Gratuity Law, was passed by the Philippine Legislature and approved by the Governor General, a copy of said law being herewith attached, marked exhibit "A" and made a part of this complaint;

V

That the said Act 4051, among other things, expressly provides, under Sec. 7 thereof, the following: "The justices of the peace who must relinquish office during the year nineteen hundred and thirty-three in accordance with the provisions of Act Numbered Thirty-Eight hundred and Ninety-Nine, shall also be entitled to the gratuities provided for in this Act."

VI

That under section 1 of the said Act 4051, officers and employees of the Insular Government who would be separated or retired from the service are entitled to a gratuity as follows:

"Regularly appointed officers and employees shall be entitled to gratuity at the rate of one month's salary or its equivalent in the case of those paid by the day or by the week for each year of service and the proportionate amount of any fraction thereof, but not to exceed twenty-

four months in the case of those whose compensation exceeds twelve hundred pesos a year; Provided, that in the case of those who receive twelve hundred pesos a year or less the total retirement gratuity to which they may be entitled shall not exceed twenty four hundred pesos".

VII

That the plaintiff and petitioner herein, by virtue of the provision of said Act 4051, duly filed his application for gratuity under the said Act with the respondents Secretary of Justice and Insular Auditor, but the respondents herein refused, denied and still refuse and deny to approve and authorize the payment to the plaintiff herein of his gratuity as in said Act 4051 is provided;

VIII

That your petitioner herein has no plain, speedy or adequate remedy to enforce his right under the provisions of said Act 4051 other than this action;

WHEREFORE, plaintiff-petitioner respectfully prays this Honorable Court:

(a) To issue a writ of mandamus directed to the respondents, commanding them forthwith to state their reasons for refusing to approve and authorize the payment of his gratuity as in said Act 4051 is provided;

(b) That in view of said return, and after hearing the respective parties, a judgment be rendered directing the issuance of a mandamus absolute, commanding the said respondents to authorize, approve and otherwise order the payment to the plaintiff-petitioner of his gratuity as in said Act 4051 is provided;

(c) That plaintiff-petitioner be awarded any other relief to which he may lawfully be entitled, with the costs of this action against the respondents.

Manila, March, 3, 1934.

MARIO BENGZON
Attorney for the Plaintiff
430 Rizal Avenue, P.O. Box 449
Manila.

PHILIPPINE ISLANDS }
CITY OF MANILA } SS.

JUAN BENGZON, having been duly sworn, deposes and says: I am plaintiff in the above entitled action; I have read the foregoing complaint and know the contents thereof; and that all the allegations contained therein are true of my own knowledge.

JUAN BENGZON

Subscribed and sworn to before me in the City of Manila this 3rd day of March 1934. Affiant did not exhibit any cedula certificate being exempt by reason of over age.

MARIO BENGZON
Notary Public
My commission expires on
December 31, 1934.

Doc. No. 359
Page 73
Book III
Series of 1934.

EXHIBIT "A"

(See par. IV of the complaint)

NINTH PHILIPPINE LEGISLATURE
Second Special Session } H. No. 2523

No. 4051

AN ACT TO PROVIDE FOR THE PAYMENT OF RETIREMENT GRATUITIES TO OFFICERS AND EMPLOYEES OF THE INSULAR GOVERNMENT RETIRED FROM THE SERVICE AS A RESULT OF THE REORGANIZATION OR REDUCTION OF PERSONNEL THEREOF, INCLUDING THE JUSTICES OF THE PEACE WHO MUST RELINQUISH OFFICE IN ACCORDANCE WITH THE PROVISIONS OF ACT NUMBERED THIRTY-EIGHT HUNDRED AND NINETY-NINE, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Legislature assembled and

by the authority of the same:

SECTION 1. Whenever it is necessary, in carrying out the provisions of Act Numbered Four thousand and seven or any other provisions of law, department order, or regulation adopted for the purpose of consolidating activities or reducing the personnel and expenses of the Government, to abolish a position or retire an officer or employee in any bureau or office of the Insular Government on or before December thirty-first, nineteen hundred and thirty-three, the officer or employee to be separated or retired from the service shall be entitled to a gratuity as follows:

(a) Regularly appointed officers and employees shall be entitled to gratuity at the rate of one month's salary or its equivalent in the case of those paid by the day or by the week for each year of service and the proportionate amount of any fraction thereof, but not to exceed twenty-four months in the case of those whose compensation exceeds twelve hundred pesos a year: PROVIDED, That in the case of those who receive twelve hundred pesos a year or less the total retirement gratuity to which they may be entitled shall not exceed twenty-four hundred pesos.

(b) Temporary officers and employees who have served the Government for at least five years before the approval of this Act, shall be entitled to gratuity at the rate of one month's salary or its equivalent in the case of those paid by the hour, by the day or by the week for each year of service and the proportionate amount of any fraction thereof, but not to exceed twenty-four months in the case of those whose compensation exceeds twelve hundred pesos a year, PROVIDED, That in the case of those who receive twelve hundred pesos a year or less the total retirement gratuity to which they may be entitled shall not exceed twenty-four hundred pesos.

(c) Temporary officers and employees who have served the Government less than five years before the approval of this Act, shall be entitled to a gratuity at the rate of half a month's salary or its equivalent in the case of those paid by the hour, by the day or by the week for each year of service and the proportionate amount of any fraction thereof.

Persons serving on a part time basis shall not be en-

titled to the gratuities authorized in this Act.

SECTION 2. In separating or retiring employees under the provisions of this Act, Department Heads shall give preference to officers or employees who, on account of their advanced age or of any physical or mental defect, are not fit to render further efficient service in the positions they occupy: PROVIDED, HOWEVER, That the appointees of the Governor-General may be retired by the Department Head concerned with the approval of the Governor-General.

SECTION 3. The gratuity provided in section one hereof shall be based on the highest basic rate of salary received and shall be paid monthly at the rate of thirty-three and one-third per centum of the monthly salary of the officer or employee, with the exception of those who will be entitled to a gratuity of one month's salary or less who shall totally be paid immediately upon separation: PROVIDED, HOWEVER, That with the approval of the Head of the Department in which such officer or employee was serving upon separation or retirement, the said officer or employee may, subject to such rules and regulations as may be approved by the Secretary of Finance, sell, transfer or cede his right to the gratuity payments, to any investment fund under the control of the Insular Government, or to any bank duly authorized to transact business in the Philippine Islands: PROVIDED, FURTHER, That the gratuity provided for in this Act shall not be attached or levied upon execution.

SECTION 4. If an officer or employee separated or retired under the provisions of this Act is entitled to the benefits of Act Numbered Twenty-five hundred and eighty-nine, as amended, or to the benefits of any law or special pension fund created by authority of the Philippine Legislature, such as the Teacher's Retirement and Disability Fund by virtue of Act Numbered Three Thousand and fifty, as amended, the Pension and Retirement Fund of the Philippine Health Service under Act Numbered Thirty-one hundred and seventy-three, and the Pension and Retirement Fund of the Philippine Constabulary under Act Numbered Sixteen hundred and thirty-eight, he shall have the privilege to choose between the benefits prescribed in said Acts and those herein provided for; but in no case

shall the payment of gratuity under more than one Act be authorized. If he chooses the benefits granted by the special pension or retirement Act, he shall be retired under the provisions of said Act if he is entitled to its benefits; in case he prefers the gratuity provided for in this Act, he shall be granted such gratuity, and the amounts deducted from his salary as contributions to the Teacher Retirement and Disability Fund, the Pension and Retirement Fund of the Philippine Health Service, or the Pension and Retirement Fund of the Philippine Constabulary, as the case may be, shall be refunded to him, and in the case of the Teacher's Retirement and Disability Fund, said fund shall also return to the general funds of the Insular Government the corresponding direct contributions made to said special fund by the Insular Government: PROVIDED, HOWEVER, That Judges and Auxiliary Judges of First Instances and Public Service Commissioners who may be retired under the provisions of this Act, shall be entitled to the benefits provided for in Act Numbered Twenty-five hundred and eighty-nine, as amended, the provisions of this Act or any other Act to the contrary notwithstanding.

SECTION 5. In case of the death of an officer or employee after separation or retirement from the service under the provisions of this Act, any gratuity or part thereof due to him shall be paid to his legitimate heir or heirs, or, if discounted under the provisions of section three hereof, then to the investment fund of the Insular Government or to the bank to which the right to such gratuity may have been ceded.

SECTION 6. A person separated or retired under the provisions of this Act may be reappointed to any position in the Insular Government but by accepting such reappointment he shall forever waive all future gratuity payments and or claims under the provisions of this Act. Similarly, a retired person who, under the provisions of section three hereof, has discounted the gratuity payments to which he is entitled shall, upon his reappointment to any position in the Insular Government, first refund to the investment fund or the bank to which he has ceded his right to the gratuity the total discounted value of all the gratuity payments which he would not yet have received had these

been made to him in monthly instalments.

SECTION 7. The Justices of the Peace who must relinquish office during the year nineteen hundred and thirty-three in accordance with the provisions of Act Numbered Thirty-eight hundred and ninety-nine, shall also be entitled to the gratuities provided for in this Act.

SECTION 8. The offices or positions vacated by the separation or retirement of officers and employees with gratuities paid under the provisions of section one of this Act shall not be filled and shall be considered abolished ipso facto, except those specifically created by law, and those of chief clerk, chief of division, and lighthouse keeper.

SECTION 9. Nothing herein provided shall be construed as entitling to the benefits of this Act those officers and employees of the Insular Government who voluntarily resign from the service due to the reduction of their compensation or to transfer from one office to another by virtue of the provisions of any Act, or to the abolition of double compensations to which they were formerly entitled, or to any cause not provided herein.

SECTION 10. The necessary sum to carry out the purposes of this Act is hereby appropriated out of any funds in the Insular Treasury not otherwise appropriated.

SECTION 11. This Act shall take effect as of January first, nineteen hundred and thirty-three: PROVIDED, That the provisions hereof shall be applicable to such officers and employees of the Insular Government as were separated from the service during the year nineteen hundred and thirty-two as a result of the operation of Executive Order No. 369 of the Governor-General and of his Memorandum Order issued on April eight, nineteen hundred and thirty-two.

SECTION 12. If for any reason, any section or provision of this Act is disapproved by the Governor-General or is challenged in a competent court and is held to be unconstitutional or invalid, none of the other sections or provisions hereof shall be affected thereby and such other section and provisions shall continue to govern as if the sections or provision so disapproved or held invalid had never been incorporated in this Act.

Approved, section 7 excepted, February 21, 1933.

On April 5, 1934, the defendants-respondents, by their counsel, filed the following demurrer:

(CAPTION AND TITLE OMITTED)

DEMURRER

Come now the defendants in the above-entitled case, by the undersigned Acting Solicitor-General, and demur to the complaint filed herein on the following grounds:

I. That the said complaint does not state facts sufficient to constitute a cause of action (1) in that the principal allegation therein, upon which plaintiff's cause of action is predicated, that plaintiff is entitled by virtue of the provisions of section 7 of Act No. 4051 to the gratuity provided for in said Act, is not legally tenable, for said section 7 of Act No. 4051 is not, and has never become, a law, and, consequently, upon its provisions no cause of action could be predicated, and (2) in that there is no allegation in the complaint that the herein defendants, who are vested with discretion in the granting of gratuities under Act No. 4051, have abused or exceeded their discretion.

II. That there is a defect of party defendant in this case, in that notwithstanding the fact that the Governor-General, whose approval is necessary to the retirement under the provisions of Act No. 4051 of his appointees, is a necessary party defendant in this action, he is not joined as such.

ARGUMENT

The essential allegations in the complaint filed in this action are: (1) that the plaintiff was prior to January 16, 1933, Justice of the Peace of Lingayen, Pangasinan, but on that date he was separated from the service by reason of the provisions of Act No. 3899; (2) that under the provisions of section 7 of Act No. 4051 (which was approved on Febraury 21, 1933, with the exception of section 7 thereof), justices of the peace who relinquish office during the year 1933 in accordance with Act No. 3899 were entitled to the gratuities provided for in Act No. 4051; (3)

that plaintiff applied for the gratuity provided for in said Act No. 4051, but the herein defendants refused to approve his application; and (4) that plaintiff has no other plain, speedy and adequate remedy in the course of law to enforce his rights.

I

The complaint herein does not allege facts sufficient to constitute a cause of action.

It is clear that the allegations of the complaint herein, as above stated, even if they were taken at face value, do not entitle the plaintiff to the issuance of a writ of mandamus compelling the defendants to approve his retirement and grant him the gratuity provided for in Act No. 4051. Section 7 of Act 4051, upon which plaintiff's cause of action is predicated, is not, and has never become, a law. Act No. 4051, which originally was H. R. Bill No. 2523, was approved by the Governor-General as follows:

"Approved: with the exception of section seven which is hereby disapproved.

"(Sgd.) THEODORE ROOSEVELT
Governor-General

"Feb. 21st '33".

(See certified copy of Act No. 4051 hereto annexed and made a part of this demurrer as Annex "1") The above veto, placed by the Governor-General on section 7 of the above mentioned bill, has been communicated in due time to the House of Representatives whence said bill originated. The Philippine Legislature accepted the veto and did nothing to override it. And, as H. R. Bill No. 2523 is an appropriation bill within the meaning of our Organic Law, for it appropriates money out of the general revenue of the State (Black & White Taxicab Co. v. Standard Oil Co., 25 Ariz. 381, 218 Pac. 139), and such is the character intended by the Legislature for the same as is apparent from a reading of the provisions of section 12 thereof whereby said Legislature anticipated the possibility of a partial veto of the bill by the Chief Executive,

the veto placed by the Governor-General on said section 7 of the bill, which is an item thereof (Callaghan v. Boyce, 17 Ariz. 433, 153 Pac. 773), is perfectly valid and constitutional. Section 19 of the Act of Congress of August 29, 1916 (the Jones Law) provides:

> **"SEC. 19. That each House of the Legislature shall keep a journal of its proceedings and, from time to time, publish the same; and the yeas and nays of the members of either House, on any question, shall upon demand of one-fifth of those present, be entered on the journal, and every bill and joint resolution which shall have passed both houses shall, before it becomes a law, be presented to the Governor-General. If he approves the same, he shall sign it; but if not, he shall return it with his objections to that House in which it shall have originated, which shall enter the objections at large on its journal and proceed to reconsider it. If, after such reconsideration, two-thirds of the members elected to that House shall agree to pass the same, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of all the members elected to that House it shall be sent to the Governor-General, who, in case he shall then not approve, shall transmit the same to the President of the United States. The vote of each House shall be by the yeas and nays, and the names of the members voting for and against shall be entered on the journal. If the President of the United States approve the same, he shall sign it and it shall become a law. If he shall not approve same, he shall return it to the Governor-General, so stating, and it shall not become a law: Provided, That if any bill or joint resolution shall not be re-**

turned by the Governor-General as herein provided within twenty days (Sundays excepted) after it shall have been presented to him the same shall become a law in like manner as if he had signed it, unless the Legislature by adjournment prevent its return, in which case it shall become a law unless vetoed by the Governor-General within thirty days after adjournment: Provided further, That the President of the United States shall approve or disapprove an act submitted to him under the provisions of this section within six months from and after its enactment and submission for his approval; and if not approved within such time, it shall become a law the same as if it had been specifically approved. The Governor-General shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he does not object. The item or items objected to shall not take effect except in the manner heretofore provided in this section as to bills and joint resolutions returned to the Legislature without his approval.

"All laws enacted by the Philippine Legislature shall be reported to the Congress of the United States, which hereby reserves the power and authority to annul the same. If at the termination of any fiscal year the appropriations necessary for the support of Government for the ensuing fiscal year shall not have been made, the several sums appropriated in the last appropriation bills for the objects and purposes therein specified, so far as the same may be done, shall be deemed to be reappropriated for the several objects and purposes specified in said last appropriation bill; and until the

Legislature shall act in such behalf the treasurer shall, when so directed by the Governor-General, make the payments necessary for the purposes aforesaid."

It is, therefore, clear that section 7 of H. R. Bill No. 2523, although incorporated in Act No. 4051, is not, and has never become a law, and that, consequently, no cause of action could be predicated upon its provisions.

Further, even granting, for the sake of argument, that section 7 of Act No. 4051 were in force, which we deny for the sake of truth, nevertheless the complaint herein does not state facts sufficient to constitute a cause of action.

Nothing is better settled in American jurisprudence than that a pension is not a matter of contract, but a mere gratuity granted by the government to deserving persons upon such terms and subject to such limitations as are imposed by existing laws and regulations. The prevailing doctrine on the subject is stated in Corpus Juris as follows:

"A pension is not a matter of contract, and is not founded upon any legal liability. No man has a legal vested right to a pension; it is a mere bounty or gratuity given by the government in consideration or recognition of meritorious past services, or of loss or damage sustained in the public service, and springing from the appreciation and graciousness of the sovereign. It may be bestowed on such persons and upon such terms as the lawmaking body of the government prescribes. And its payment must be made and accepted in exact conformity with the terms of the grant, and must be subjected to all the limitations, conditions, and exceptions contained. It is, at most, an expectancy granted by the law. And although existing pension laws may entitle one to a pension, the government may, at its pleasure, at any time, change the amount thereof, or re-

voke or destroy it altogether." (48 C.J., 786)

It may, therefore, be taken for granted that, although Act No. 4051 is silent on the subject, the granting of retirements under the provisions of said Act are subject to all the conditions and limitations of the existing laws and civil service regulations on the subject. In every case, therefore, of application for gratuity under Act No. 4051, Department Secretaries must use discretion and sound judgment, for a pension roll is a roll of honor and only those who by their conduct and behavior in office were a credit to the service are entitled to a pension. Hence, it cannot be denied that the defendant Secretary of Justice is vested with discretion in the determination of applications for gratuity under the provisions of Act No. 4051 filed by officers and employees under the Department of Justice. The exercise of the discretion thus conferred upon the Secretary of Justice by law cannot be controlled by the mandamus. The courts may force him to exercise such discretion, but they cannot force him to exercise it in a given direction, nor force him to change his decision once it has been made, except where it is apparent that he has abused his discretion or exceeded his jurisdiction (Lamb v. Philipps. 22 Phil. 456; Dy Gay v.: Crossfield & O'Brien, 38 Phil. 521)

In the instant case, the complaint merely alleges that the defendants have refused to approve plaintiff's application for a gratuity under Act No. 4051. There is no allegation in said complaint that defendants in so doing abused their discretion or exceeded their jurisdiction. It is, therefore, clear that the complaint does not state facts sufficient to entitle the plaintiff to the issuance of the writ of mandamus prayed for therein.

Moreover, as will be discussed hereinafter, the plaintiff is an appointee of the Governor-General. As such he can only be retired and granted a gratuity under the provisions of Act. No. 4051, with the approval of the Governor-General (See 2, Act No. 4051). There is no allegation in the complaint that the Governor-General has approved plaintiff's retirement under the provisions of Act No.

4051. The defendants, therefore, cannot be coerced by a writ of mandamus to approve plaintiff's retirement under said law and grant him the pension therein provided for, for that would be forcing them to do something which they alone cannot do. (Tabigue v. Duvall, 16 Phil. 324; Gonzales v. Board of Pharmacy, 20 Phl. 367)

II

There is a defect of party defendant in this action, in that the Governor-General, who is a necessary party defendant therein is not joined as such.

The plaintiff, as is alleged in the complaint, was Justice of the Peace of Lingayen, Pangasinan, prior to his separation from the service. He is, therefore, an appointee of the Governor-General (See 203, Adm. Code). Being an appointee of the Governor-General, he may only be retired under the provisions of Act No. 4051 by the defendant Secretary of Justice, with the approval of the Governor-General (Sec. 2, Act No. 4051). The Governor-General, is, therefore, a necessary party defendant in this case.

At this juncture, we deem it pertinent to remark, in anticipation of a possible move on the part of the plaintiff in the sense of joining the Governor-General as a party defendant in this case, that the Chief Executive's acts cannot be controlled by mandamus.

In the case of Severino versus Governor-General (16 Phil., 366), this court said:

> **"We think that the weight of authority, based upon legal principles and sound reasoning, supports the proposition that in the United States the supreme courts of the United States do not have jurisdiction to control the official acts of the governor. For better reasons we conclude that this court has no jurisdiction, either by mandamus or injunction, to control the official acts of the Governor-General, inasmuch as we have seen that his duties powers, and responsibilities are more**

comprehensive than those conferred upon any State Governor. When the Philippine Legislative body confers upon the Governor-General powers and duties, it does so for the reason that he is in a better position to know the needs of the country than any other member of the executive department, and with the full confidence that he will perform such duties, under his official oath, as his best judgment dictates. If this had not been the intention of the Legislature, they could have placed the duty upon some other official of the executive department. It no doubt is sometimes very necessary for the Governor-General to perform certain important executive duties without delay, and should this court attempt to distinguish between purely ministerial and discretionary duties, conferred upon him by law, and attempt to determine in each case which are purely ministerial, which are political, or which are discretionary, the Governor-General, to that extent, would become subservient to the judiciary. To avoid this is why the three great coordinate departments of the Governments were created and made independent of each other. President McKinley in creating civil government in this country took into consideration these fundamental principles of separate and independent departments, which have been demonstrated to be essential to a republican form of government, and conferred upon the Governor-General, as The Executive of the Philippine Islands, the power to execute the laws according to his best judgment, holding him responsible to the President of the United States, without interference on the part of the judiciary. In so doing, he reposed in the Executive of this country great confidence, realizing that he,

the Executive, acting independently of the judiciary, would be in a better position to carry out the great underlying principles of American institutions for the peace and happiness of the inhabitants of this country. The President realized that the final decision of every question in controversy must be left somewhere, and when such decision has been made it must be acepted as correct. The presumption is just as conclusive in favor of the executive action as to its correctness and justness, as it is in favor of judicial action." (Pages 400-402).

And in the case of Forbes etc. versus Chuoco Tiaco et al. (16 Phil., 534), it was held:

"In a government of separate and independent departments, executive, legislative, and judicial, with separate and distinct functions, one department will not attempt to interfere with the performance of the exclusive duties of another. To permit such an interference would destroy the independence of the separate departments and would make one subject to the control of the others. For the judiciary to interfere, for the purpose of questioning the manner of exercising the legal and political duties of the chief executive head of the Government or to control the action of the Legislative department, would, in effect, destroy the independence of the departments of the Government and would make all departments subject to the ultimate control of the judicial. Such a conclusion or condition was never contemplated by the organizers of the Government."

For the foregoing, we respectfully pray this Court

to dismiss the complaint filed in this case, with no costs taxed to the plaintiff.

Manila, April 5, 1934

EMILIO PEÑA
Acting Solicitor-General

On April 15, 1934, the Court overruled the demurrer filed. On April 26, 1934, the defendants respondents duly excepted to the order of the Court overruling their demurrer and at the same time filed the following answer:

(CAPTION AND TITLE OMITTED)

ANSWER

Come now the defendants in the above entitled case, by the undersigned Acting Solicitor-General, and, in answer to the complaint filed herein allege that they deny, generally and specifically, each and every allegation contained in said complaint.

Manila, April 26, 1934.

EMILIO PEÑA
Acting Solicitor-General

The case was submitted by the parties on the following stipulation of facts:

"STIPULATION OF FACTS"

"Come now the parties in the above entitled case, by their respective attorneys, and to this Honorable Court respectfully submit the following stipulation of facts:

"That the plaintiff, Juan Bengzon, is of legal age, a resident of the municipality of Lingayen, Pangasinan, and an ex-Justice of the Peace for the municipality of Lingayen, Pangasinan;

That defendants Secretary of Justice and Insular Auditor are the duly appointed and qualified Secretary of Justice and Insular Auditor of the Philippine Islands, respectively;

That the plaintiff herein, who is now about 70 years old, has been in the Government service as Justice of the Peace continually for more than twenty years, having been appointed as Justice of the Peace for the municipality of Lingayen, Pangasinan, on March 7, 1912, and ceased as such on January 14, 1933, by reason of the provisions of Act No. 3899;

That on or about December 31, 1932 the plaintiff herein wrote to the defendant Secretary of Justice a letter in which plaintiff requests for advice as to whom he should turn over the office of Justice of the Peace of Lingayen, Pangasinan. Copy of said letter is hereto annexed and made a part of this stipulation of facts as Exhibit "A";

That on or about January 13, 1933, the plaintiff herein received from the Honorable Pastor Endencia, then Acting Judge of the fifth Judicial District, a communication in which plaintiff was advised to turn over the office of Justice of the Peace of Lingayen to the Auxiliary Justice of the Peace of said municipality. Copy of said communication is hereto annexed and made a part of this stipulation of facts as Exhibit "B";

That on or about January 16, 1933, the plaintiff herein sent to the Honorable Pastor M. Endencia, then acting Judge of the Fifth Judicial District, a letter in which plaintiff advised said Judge of First Instance that on January 14, 1933, he turned over the office of Justice of the Peace of Lingayen, Pangasinan to Mr. Hilarion Magno, Auxiliary Justice of the Peace of said municipality. Copy of this letter is hereto annexed and made a part of this stipulation of facts as Exhibit "C";

That on or about March 26, 1933, the plaintiff herein sent to the defendant Secretary of Justice a communication applying for gratuity under act 4051, and that on or about April 5, 1933, the plaintiff herein received from the said Secretary of Justice a reply to said communication advising him that he was not entitled to the benefits of Act No. 4051. Copies of the said communication and re-

ply are hereto annexed and made a part of this stipulation of facts as Exhibits "D" and "E" respectively;

That on or about November 18, 1933, the plaintiff herein wrote a letter to the Governor-General, asking the latter to direct the defendants Secretary of Justice and Insular Auditor to approve plaintiff's application for gratuity as the Governor-General has no right to veto Section 7 of Act No. 4051, and on or about December 15, 1933, the plaintiff herein received from the Governor-General a reply thereto, advising the herein plaintiff that his contention has no merits. Copies of the said letter and reply are hereto annexed and made a part of this stipulation of facts as Exhibits "F" and "G" respectively;

That on or about December 23, 1933, the plaintiff herein sent to the Insular Auditor a letter, requesting the latter to authorize the payment to plaintiff of his gratuity for which an application had already been filed with the Department of Justice, and on or about January 18, 1934, the plaintiff herein received from the Insular Auditor a reply thereto, in which plaintiff was advised that Section 7 of Act No. 4051 was disapproved by the Governor-General and, consequently, he was not entitled to the gratuity provided for in said Act. Copies of said letter and reply are hereto annexed and made a part of this stipulation of facts as Exhibits "H" and "I", respectively."

Manila, P. I., July 20, 1934.

(Sgd.) SERAFIN HILADO
Solicitor-General
Attorney for the defendants.

(Sgd.) MARIO BENGZON
Attorney for the plaintiff.

Exhibit "A"

(See paragraph V of the Stipulation of Facts)

Office of the Justice of the Peace
Lingayen, Pangasinan, P. I.

December 31, 1932

The Honorable Secretary of Justice
Manila, P. I.
Honorable Sir:

Having reached the age of 65 years, and Act 3899 of the Philippine Legislature, approved on November 16, 1931, providing that present Justices of the Peace who have completed 65 years of age shall cease to be such on January 1, 1933, permit me to request you for advice as to whom I shall have to turn over the office of Justice of the Peace of Lingayen, province of Pangasinan, of which office I am to be relieved by provisions of law, without prejudice to my right to question, before a competent court, at such time I deem convenient and proper, the constitutionality of said law, for being a cruel and unjust punishment, without due process of law, in view of the lack of a pension or compensation to my forced retirement, simply because of having reached the age of 65 years.

I do not dare turn over the office of Justice of the Peace to the Auxiliary Justice of the Peace, Mr. Hilarion Magno, without the proper authority from you, to avoid protests against him in particular, he not being considered here by lawyers and residents in general as competent and fit for the post.

Very respectfully,

JUAN BENGZON
Justice of the Peace of Lingayen

Exhibit "B"

(See paragraph VI of the Stipulation of Facts)

COURT OF FIRST INSTANCE
PROVINCE OF PANGASINAN
Lingayen, P. I.

January 13, 1933.

Sir:

You are hereby advised that this court has received a communication from the Hon. Secretary of Justice, dated January 5, 1933, which says as follows:

> "Mr. Juan Bengzon, Justice of the Peace of Lingayen, Pangasinan, has already reached the age of sixty-five years, and, by operation of Act No. 3899, he is automatically separated from the ser-

vice, effective January 1, 1933. It is requested that you advise him accordingly."

If until now you have not yet turned over your office to the Auxiliary Justice of the Peace of that municipality, you are hereby directed to do so immediately and notify this Court accordingly.

Very respectfully

(Sgd.) P. M. ENDENCIA
Acting Judge
Fifth Judicial District.

Mr. Juan Bengzon,
Justice of the Peace,
Lingayen, Pangasinan

Exhibit "C"

(See paragraph VII of the Stipulation of Facts)

Lingayen, Pangasinan
January 16, 1933.

HON. P. M. ENDENCIA
Judge of the Court of First Instance
Fifth Judicial District.

Hon. Sir:

I have the honor to advise that, by virtue of your order directed to me, dated the 13th of this month, received by me at 11:40 a.m. of the 14th, I turned over the office of Justice of the Peace of Lingayen at exactly 12:00 o'clock noon of that same day to the Auxiliary Justice of the Peace, Mr. Hilarion Magno.

Very respectfully,

(Sgd.) JUAN BENGZON

Exhibit "D"

(See paragraph VIII of the Stipulation of Facts)

The Hon. Secretary of Justice
Manila, P. I.

Honorable Sir:

The undersigned has the honor to respectfully show to your honor the following:

From March 7, 1912 until January 14, 1933, I was Justice of the Peace for Lingayen, Pangasinan, P. I.

I ceased as Justice of the Peace on January 14, 1933, by an order of the Judge of the Court of First Instance of Pangasinan, by reason of the provisions of Act 3899 of the Philippine Legislature that Justices of the Peace who had reached the age of 65 years would be automatically retired.

In the gratuity bill recently approved by the Philippine Legislature and by the Governor-General, the Justices of the Peace retired under Act 3899 are included.

Wherefore, the undersigned requests that you order the payment to the undersigned, who has completed 21 years service, of the gratuity granted by said law in the manner set forth in said law. The monthly salary of the Justice of the Peace of Lingayen, Pangasinan in December, 1932, provided by law, is ₱300.00; so that the amount payable to me by virtue of the Gratuity Law, with 21 years of service, amounts to ₱6,300.00.

Very respectfully,

(Sgd.) JUAN BENGZON

Exhibit "E"

(See paragraph VIII of the Stipulation of Facts)

DEPARTMENT OF JUSTICE
Manila

April 5, 1933

Sir:

With reference to your communication of March 26, 1933, applying for retirement gratuity under Act 4051, I have the honor to advise you that the Governor-General vetoed section 7 of that Act, which would grant retirement gratuity to justices of the peace who had been dropped from the service by operation of Act 3899. You are there-

fore not entitled to the benefits of Act No. 4051.

For the Secretary of Justice:

Respectfully,

(Sgd.) SALVADOR ABAD SANTOS
Assistant Attorney on especial detail
Department of Justice

Mr. Juan Bengzon
Lingayen, Pangasinan
Ca-ffg

Exhibit "F"

(See paragraph IX of the Stipulation of Facts)

UNITED STATES OF AMERICA
PHILIPPINE ISLANDS

His Excellency the Governor General
of the Philippine Islands.

JUAN BENGZON,
Petitioner.

Re Section 7 of Act 4051 of the Philippine Legislature.

X - - - - - - - - - - X

Excellency:

The undersigned, lawyer, resident of Lingayen, capital of the province of Pangasinan, Philippine Islands, has the honor to respectfully expound and submit to your Excellency's consideration, the following:

On January of this year, 1933, at about twelve o'clock noon, the undersigned, being then performing his duties as Justice of the Peace for the municipality of Lingayen, which office he had been honorably and satisfactorily occupying since March 7, 1912, received an order from the Hon. Judge of the Court of First Instance of Pangasinan, Hon. Pastor Endencia, commanding him to immediately vacate and turn over the office of Justice of the Peace to the Auxiliary Justice of the Peace of said municipality, by reason of a communication from the Hon. Secretary of Justice which says as follows:

"Mr. Juan Bengzon, Justice of the Peace of Lingayen, Pangasinan, has already reached the age of sixty five years, and by operation of act 3899 he is automatically separated from the service, effective January 1, 1933. It is requested that you advise him accordingly."

By reason of said order of the said Hon. Judge of the Court of First Instance of Pangasinan, the undersigned, on said date of January 14, vacated the office of Justice of the Peace of the said municipality of Lingayen, and turned over the same to the Auxiliary Justice of the Peace.

Wherefore, it being provided in section 7 of the Gratuity Law, Act 4051 of the Philippine Legislature, approved on Febraury 21 last by the Governor-General of the Philippine Islands, the predecessor of your Excellency, a gratuity or compensation to the Justices of the Peace who were automatically retired by virtue of Act 3899, the undersigned filed a petition with the Hon. Secretary of Justice of the Philippine Islands, praying that he be paid his gratuity or compensation in the amount and in the form established in said Act 4051; but, the undersigned received a communication from the said Secretary of Justice of the Philippine Islands in which he states that the undersigned has no right to the said gratuity provided for in said act, by reason of the fact that said section 7 of said Act 4051 was vetoed by the Chief Executive.

It is true that at the foot of said Act 4051, the Hon. Governor General of the Philippine Islands, the predecessor of your Excellency, has placed the following "approved, section 7 excepted"; but these terms do not constitute positive, formal and technical veto of said section of the law, because "veto", as understood in the United States, is the expressed and reasoned disapproval by the Chief Executive of a bill or law approved by the Legislature, in whole or in part. (Webster New International Dictionary of the English Language)

On the other hand, the Organic Law of the government of the Philippine Islands, promulgated by the Congress of the United States on August 29, 1916, commonly known as the Jones Law, does not confer upon the Governor General of the Philippine Islands the power to veto a part or parts of any law passed by the Philippine Legislature, except only an appropriation law; neither does it grant

any authority to the Legislature of the Philippine Islands to grant to the Chief Executive said power. This can be seen clearly in the said Jones Law, and this has also been expressly declared by the present Attorney-General of the United States of America in his opinion re the Tariff Bill passed by the Philippine Legislature, and vetoed by the Governor General of the Philippine Islands, your Excellency's predecessor, published in the Manila Daily Bulletin of June 9 last, page 1, column 2, which is herewith enclosed. Consequently, even considering that those terms "section 7 excepted" constitute a positive, formal and technical veto of the provision of section 7 of Act 4051 of the Philippine Legislature, said veto is invalid, and therefore, the said section 7 of Act 4051 is in force and should be complied with.

Without conceding the gratuity or compensation to the Justices of the Peace who had been, under the provisions of Act 3899, automatically retired as such, by reason of their having reached the age of sixty five years, it will result that this provision of law would be unconstitutional, because it would mean their deprivation of an office, without due process of law, and which would demonstrate their incapacity to hold the office, by reason of their having reached the age of sixty five years, that is, it would be an uncalled for punishment against them, without due process of law, which is expressly prohibited in section 3 of said law. This consideration, that it would be an unjust and cruel punishment which would reduce them to poverty and indigence, making them retire from the office by reason of having reached the age of sixty five years, without any compensation, in which office they have employed their experience, education, and maturity in life, for the salary provided for by law to each and everyone of them, when they are as worthy to receive the benefits of the compensation as other employees of the government who, by reason of the reorganization, have been deprived of their employment, are to be supposed the reasons for the existence of said section 7 of the gratuity or of Act 4051 of the Philippine Legislature.

WHEREFORE, the undersigned respectfully requests your Excellency that, in the name of justice and equity, your Excellency order the Secretary of Justice to proceed to take the proper steps which would lead to the payment

of the gratuity or compensation to which the undersigned is entitled in accordance with section 7 of Act 4051 of the Philippine Legislature, in the amount and sum provided for in said law.

November 18, 1933.

Very respectfully submitted,
JUAN BENGZON
Petitioner

Exhibit "G"

(See paragraph IX of the Stipulation of Facts)

OFFICE OF THE GOVERNOR-GENERAL
OF THE PHILIPPINE ISLANDS

Manila, December 15, 1933.

Sir:

Referring to your letter of November 18, 1933, alleging that the Governor-General has no authority to veto section 7 of Act No. 4051, I am quoting hereunder, for your information, the 2nd indorsement of the Secretary of Justice dated December 6, 1933, which is self-explanatory:

"Respectfully returned to the Secretary to the Governor-General, Manila.

This office finds no merit in the contentions of ex-justice of the peace Juan Bengzon. However, since questions of constitutionality and the validity of the veto of section 7 of Act No. 4051 are raised by Mr. Bengzon, he can bring the matter in court."

Very respectfully,

(Sgd.) RICHARD R. ELY,
Assistant Secretary to the
Governor-General.

Mr. Juan Bengzon,
Lingayen, Pangasinan.

Exhibit "H"

(See paragraph X of the Stipulation of Facts)

Lingayen, Pangasinan
December 23, 1933.

The Insular Auditor
Manila, P. I.

Sir:

The undersigned was, until January 14, 1933, the Justice of the Peace of Lingayen, Pangasinan. By virtue of Act No. 3899, passed by the Philippine Legislature and approved by the Governor General, he ceased to be the Justice of the Peace of Lingayen, Pangasinan, by reason of age.

Under section 7 of Act No. 4051, commonly known as the Gratuity Law, passed by the Philippine Legislature and approved by the Governor General, Justices of the Peace who had been separated from the service under Act No. 3899, are entitled to the benefits granted by the said Gratuity Law. Unfortunately, however, the Governor General, in approving the said Gratuity Act, specifically excepted from his approval or vetoed the said section 7 of the Act.

The undersigned, however, believes and is of the opinion that said section 7 of Act No. 4051, notwithstanding the veto of the Governor General, is in full force and effect. Under the Philippine Organic Law, the Governor General has the power to veto any and all legislation passed by the Philippine Legislature, but nowhere in said Organic Law is the Governor General empowered to veto any portion and approve the rest of any legislation passed by the Philippine Legislature, except as to an item or items of an appropriation act. The Governor General's power, therefore, under the Organic Act, is limited to approving or disapproving any legislation in TOTO, except as to an appropriation act.

By reason of the foregoing, the undersigned is of the opinion that the veto of section 7 of Act No. 4051 by the Governor General is unconstitutional, hence said section 7 is in full force and effect. In consequence, the undersigned is entitled to the benefits granted by the said Act No. 4051.

The undersigned, hereby, therefore, respectfully in-

quires of your office whether or not you will authorize the payment to him of his gratuity under the said Act No. 4051, known as the Gratuity Law, and for that purpose, the undersigned respectfully requests that your office authorize the payment to him of his gratuity, application to it having been already filed with the department concerned.

Yours respectfully,

JUAN BENGZON

Exhibit "I"

(See paragraph X of the Stipulation of Facts)

THE GOVERNMENT OF THE PHILIPPINE ISLANDS
OFFICE THE THE AUDITOR.
MANILA

January 18, 1934

Mr. Juan Bengzon
Lingayen, Pangasinan

Sir:

In reply to your letter of December 23, 1933, please be advised that section 7 of Act 4051 was disapproved by the Governor-General in accordance with the provisions of Section 12 of the same Act. The action of the Governor-General in disapproving Section 7 being in accordance with law is perfectly constitutional. You are not, therefore, entitled to the gratuity provided for in said Act.

Respectfully,

(Sgd.) J. WELDON JONES
Insular Auditor

On August 29, 1934, the Court rendered the following decision:

(CAPTION AND TITLE OMITTED)

D E C I S I O N

The parties in this case, by their respective attorneys,

submitted to this Court on July 21, 1934, the following:

"STIPULATION OF FACTS"

"Come now the parties in the above entitled case, by their respective attorneys, and to this Honorable Court respectfully submit the following stipulation of facts;

"That the plaintiff, Juan Bengzon, is of legal age, a resident of the municipality of Lingayen, Pangasinan, and an ex-Justice of the Peace for the municipality of Lingayen, Pangasinan;

That defendants Secretary of Justice and Insular Auditor are the duly appointed and qualified Secretary of Justice and Insular Auditor of the Philippine Islands, respectively;

That the plaintiff herein, who is now about 70 years old, has been in the Government service as Justice of the Peace continuously for more than twenty years, having been appointed as Justice of the Peace for the municipality of Lingayen, Pangasinan, on March 7, 1912, and ceased as such on January 14, 1933, by reason of the provisions of Act No. 3899;

That on or about December 31, 1932 the plaintiff herein wrote to the defendant Secretary of Justice a letter in which plaintiff requests for advice as to whom he should turn over the office of Justice of the Peace of Lingayen, Pangasinan. Copy of said letter is hereto annexed and made a part of this stipulation of facts as Exhibit "A";

That on or about January 13, 1933, the plaintiff herein received from the Honorable Pastor Endencia, then Acting Judge of the Fifth Judicial District, a communication in which plaintiff was advised to turn over the office of Justice of the Peace of Lingayen to the Auxiliary Justice of the Peace of said municipality. Copy of said communication is hereto annexed and made a part of this stipulation of facts as Exhibit "B";

That on or about January 16, 1933, the plaintiff herein sent to the Honorable Pastor M. Endencia, then Acting Judge of the Fifth Judicial District, a letter in which plaintiff advised said Judge of First Instance that on January 14, 1933, he turned over the office of Justice of the Peace

of Lingayen, Pangasinan to Mr. Hilarion Magno, Auxiliary Justice of the Peace of said municipality. Copy of this letter is hereto annexed and made a part of this stipulation of facts as Exhibit "C";

That on or about March 26, 1933, the plaintiff herein sent to the defendant Secretary of Justice a communication applying for gratuity under Act 4051, and that on or about April 5, 1933, the plaintiff herein received from the said Secretary of Justice a reply to said communication, advising him that he was not entitled to the benefits of Act No. 4051. Copies of the said communication and reply are hereto annexed and made a part of this stipulation of facts as Exhibits "D" and "E" respectively;

That on or about November 18, 1933, the plaintiff herein wrote a letter to the Governor-General, asking the latter to direct the defendants Secretary of Justice and Insular Auditor to approve plaintiff's application for gratuity as the Governor-General has no right to veto Section 7 of Act No. 4051, and on or about December 15, 1933, the plaintiff herein received from the Governor-General a reply thereto advising the herein plaintiff that his contention has no merits. Copies of the said letter and reply are hereto annexed and made a part of this stipulation of facts as Exhibits "F" and "G" respectively;

That on or about December 23, 1933, the plaintiff herein sent to the Insular Auditor a letter, requesting the latter to authorize the payment to plaintiff of his gratuity for which an application had already been filed with the Department of Justice, and on or about January 18, 1934, the plaintiff herein received from the Insular Auditor a reply thereto, in which plaintiff was advised that Section 7 of Act No. 4051 was disapproved by the Governor-General and, consequently, he was not entitled to the gratuity provided for in said Act. Copies of said letter and reply are hereto annexed and made a part of this stipulation of facts as Exhibits "H" and "I", respectively."

Manila, P. I., July 20, 1934.

(Sgd.) SERAFIN HILADO
Solicitor-General
Attorney for the defendants.

(Sgd.) MARIO BENGZON
Attorney for the plaintiff.

Counsel for petitioner filed his memorandum on the 14th day of the month, and counsel for the respondents filed his reply memorandum on the 24th day of the month.

Plaintiff's action seeks the issuance of a writ of mandamus. Its purpose is to ask of this Court that the respondents be ordered to approve and authorize the payment to the petitioner herein of his gratuity in accordance with Act No. 4051. The action is predicated upon section 7 of said Act 4051 which provides:

> **"Sec. 7.—The justices of the peace who must relinquish office during the year nineteen hundred and thirty- three in accordance with the provisions of Act Numbered Thirty-Eight hundred and ninety-nine, shall also be entitled to the gratuities provided for in this Act."**

This section 7 of Act 4051 was vetoed by the Governor-General on February 21, 1933. The veto was as follows:

Act 4051 was House Resolution Bill No. 2523 and the Governor-General says in the English text submitted to him for approval: "Approved: with the exception of Section 7, which is hereby disapproved."

(Sgd.) THEODORE ROOSEVELT
(Governor-General)

Counsel for petitioner contends, however: (1) that the veto by the Governor-General is neither valid nor constitutional; (2) that said section 7 of Act 4051 is in force as law, and that petitioner is entitled to his gratuity as provided in said section; (3) that section 12 of said Act 4051 does not affect section

7 therein and (4) that plaintiff's action for a writ of mandamus is the proper remedy.

In the discussion of the issues raised by the petitioner, the most important is the last, in view of the fact that the very petitioner admits that section 7 of Act 4051 has been vetoed by the Governor-General.

The two respondents herein are executive officials of the government. Their duties are defined and regulated by law. In connection with the question raised in this cause, each one of them is subject, in the performance of his duties, to the provisions of the law. If section 7 of Act 4051 has been vetoed by the Governor-General, the veto, upon making said section 7 of Act 4051 without effect, because that is the effect of the veto, relieves, naturally, the respondents of their duties under said section. In this case the action for a writ of mandamus is improper:

> "**MANDAMUS—Mandamus will not lie to compel a public official to perform an act which is not peremptorily enjoined upon him by law, as one of the duties** inherent in his office.—Manotoc V. McMicking, Phil. 10-120".

> "**MANDAMUS—It is essential, for the issuance of a writ of mandamus, that the plaintiff has a legal patent right to the thing he sues for, and that the act being required of the defendant be an act peremptorily enjoined upon him by law. It will not be issued in doubtful cases. Although it may not be necessary that the duty be absolutely expressed, it is, however, necessary that it be clear. The writ will not be issued to compel an officer to do something which is not his duty**

> **to do, or that it is his duty not to do or to give the petitioner something to which he is not entitled under the law. The writ neither confers powers nor imposes duties. It is simply a mandate to compel the exercise of a power already possessed and to perform a duty already existing.**—Gonzales v. Board of Pharmaceutical Examiners—20 Phil. p. 376."

Petitioner contends that the veto by the Governor-General is not valid because it is unconstitutional. This question cannot be raised in this case, because the Governor-General is not a party to the case. In order that it may be raised in this case, the Governor-General should be made a party, because the question affects him directly. However, the inclusion of the Governor-General as a party in the case would be another reason why the remedy of a writ of mandamus would not be proper:

> **"GOVERNMENT: Independent departments: A department should not interfere in the performance by the other of its functions. In a government of separate and independent departments, executive, legislative, and judicial, with separate and distinct functions, one department will not attempt to interfere with the performance of the exclusive duties of another. To permit such an interference would destroy the independence of the separate departments and would make one subject to the control of the others. For the judiciary to interfere, for the purpose of questioning the manner of exercising the legal and political duties of the chief executive head of the Government or to control the action of the legislative department, would, in effect, destroy the independence of the**

departments of the Government and would make all departments subject to the ultimate control of the judicial. Such a conclusion or condition was never contemplated by the organizers of the Government." Forbes etc. v. Chuoco Tiaco and Crossfield, 16 Phil. 534.

The second and third questions are practically included in the first. If, as already declared, the first question raised cannot be determined in this case, because the Governor-General is not a party, necessarily the second and third questions do not merit consideration.

WHEREFORE, the Court dismisses petitioner's action with costs.

SO ORDERED.

Manila, August 25, 1934.

PEDRO Ma. SISON
JUDGE

The plaintiff-appellant appealed to the Supreme Court of the Philippine Islands from the decision of the Court of First Instance of Manila and on November 22, 1934, the case was duly docketed on appeal, bearing No. 42821 of the General Register of the Supreme Court.

On January 31, 1935, the petitioner-appellant, by his undersigned attorney, filed his brief in the case, assigning the following errors:

I

The Court **A QUO** erred in declaring that the question of the validity and the constitutionality of the veto by the Governor-General of section 7 of Act 4051 cannot

be determined in this present case because the Governor-General is not included as a party to it, and, thus in dismissing plaintiff's action with costs.

II

The Court **A QUO** erred in not declaring that the veto by the Governor-General of section 7 of Act 4051 is unconstitutional and invalid, hence said section 7 of Act 4051 is in full force and effect as law.

III

The lower Court erred in not declaring that the plaintiff-petitioner is entitled to his gratuity under said section 7 of Act 4051.

IV

The Court **A QUO** erred in not granting plaintiff-appellant's petition for the issuance of a writ of mandamus directed against defendants-respondents.

On July 15, 1935, the case was submitted for decision.

On January 18, 1936, the Supreme Court of the Philippine Islands rendered the following decision:

(CAPTION AND TITLE OMITTED)

DECISION

MALCOLM, J.:

This case was brought by a former justice of the peace to test the validity of the veto by the Governor-General of section 7 of Act 4051, the Retirement Gratuity Law. In the trial court the petition for a writ of mandamus directed to the Secretary of Justice and the Insular Auditor was dismissed. Thereupon the losing party appealed.

The facts, as stipulated, disclose the following: Juan Bengzon, the petitioner was appointed justice of the peace for the Municipality of Lingayen, Pangasinan, on March 7, 1912. Having reached the age of sixty-five he ceased to hold this position

on January 14, 1933, by reason of the provisions of Act No. 3899. On that date, acting pursuant to instructions received from the Judge of First Instance for the district, he turned over the office of the justice of the peace to the auxiliary justice of the peace of the municipality. Subsequently the petitioner addressed communications to the Secretary of Justice, the Governor-General, and the Insular Auditor applying for gratuity under Act No. 4051, but all of these officials advised him that he was not entitled to the benefits of the Act. Accordingly, on March 7, 1934, the instant complaint was filed with the Court of First Instance of Manila.

Act No. 4051 is entitled, "An Act to provide for the payment of retirement gratuities to officers and employees of the Insular Government retired from the service as a result of the reorganization or reduction of personnel thereof, including the justices of the peace who must relinquish office in accordance with the provisions of Act Numbered Thirty-eight hundred and ninety-nine, and for other purposes." The body of the Act provides in several sections for the officers and employees who may be granted gratuities thereunder, the rates of gratuities to be paid, and other matters. Among these sections, as the bill passed the Philippine Legislature, was section 7, reading: "The justices of the peace who must relinquish office during the year nineteen hundred and thirty-three in accordance with the provisions of Act Numbered Thirty-eight hundred and ninety-nine, shall be also entitled to the gratuities provided for in this Act." Following this is section 10, reading: "The necessary sum to carry out the purposes of this Act is hereby appropriated out of any funds in the Insular Treasury not otherwise appropriated," and section 12 reading, "If, for any reason, any section or provision of this

Act is disapproved by the Governor-General or is challenged in a competent court and is held to be unconstitutional or invalid, none of the other sections or provisions hereof shall be affected thereby and such other sections and provisions shall continue to govern as if the section or provision so disapproved or held invalid had never been incorporated in this Act." The Act was "approved" by the Governor-General, "section 7 excepted, February 21, 1933". The Philippine Legislature accepted the veto.

Section 19 of the former Organic Act, the Act of Congress of August 29, 1916, established the practice for the enactment of a law, including the sanctioning of the veto power by the Governor-General. Specifically it provided: "The Governor-General shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he does not object". The Constitution of the Philippines, Article VI, section II (2) contains an exactly similar provision, except that the words "The President" are substituted for the words "The Governor-General," and except that succeeding sentences in the Constitution prescribe the procedure for vetoing one or more items of an appropriation bill in a more explicit manner.

The first thought that occurs to one in resolving the appeal of the petitioner is that, within the meaning of section 7 of Act No. 4051, on the assumption that it be restored to the law by the judiciary, he has not shown himself to be a justice of the peace who was forced to relinquish office during the year 1933. At least, he did not take steps to vindicate an alleged right as did the justices of the peace of the Municipality of Malinao, Albay, and the Municipality of Alabat, Tayabas, (Regalado v. Yulo, 1935, XXXIII O. G. 925; Tañada v. Yulo, 1935,

XXXIII O. G. 1843). However, this point has not been advanced by the Government either in the lower court or on appeal, and so it would seem to be inappropriate to manufacture a defense for the respondents.

Something might also be made of the proposition on which the trial judge relied for dismissal and which is brought into view by the first assigned error. In other words, since the duty which the petitioner claims is enjoined by law upon the respondents not only does not exist but would require the intervention of the Governor-General, who is not a party, to exist, no cause of action is made out. This, however, merely results in hiding behind a technicality to keep the parties from securing the opinion of the courts on the main issue. We prefer to satisfy the petitioner by ruling on the question suggested by the first sentence of this decision and which is raised squarely by the second assigned error.

The Governor-General purported to act pursuant to the portion of section 19 of the Organic Act which is above quoted. The key words of that sentence are "appropriation bill" and "item or items." An appropriation is the setting apart by law of a certain sum from the public revenue for a specified purpose. An item is the particulars, the details, the distinct and severable parts of the appropriation or of the bill. No set form of words is needed to make out an appropriation or an item. (State v. Moore, 1896, 50 Neb. 88; Callaghan v. Boyce, 1915, 17 Ar. 433).

Within the meaning of these words, is Act No. 4051 an appropriation bill? Are there particular items in that bill which the Governor-General could constitutionally veto? We are led to answer both questions in the affirmative.

The former Organic Act and the present Constitution of the Philippines make the Chief Executive an integral part of the law making power. His disapproval of a bill, commonly known as a veto, is essentially a legislative act. The questions presented to the mind of the Chief Executive are precisely the same as those the legislature must determine in passing a bill, except that this will be a broader point of view.

The Constitution is a limitation upon the power of the legislative department of the government, but in this respect it is a grant of power to the executive department. The legislature has the affirmative power to enact laws; the Chief Executive has the negative power by the constitutional exercise of which he may defeat the will of the legislature. It follows that the Chief Executive must find his authority in the Constitution. But in exercising that authority he may not be confined to rules of strict construction or hampered by the unwise interference of the judiciary. The courts indulged every intendment in favor of the constitutionality of a veto the same as they will presume the constitutionality of an act as originally passed by the Legislature. (Commonwealth v. Barnett, 1901, 199 Pa. 161, 55 L. R. A. 882; People v. Board of Councilman, 1892, 20 N. Y. S. 52; Fulmore v. Lane, 1911, 104 Tex. 499; Texas Co. v. State, 1927, 53 A. L. R. 258).

In determining whether or not the Governor-General stepped outside the boundaries of his legislative functions, when he attempted to veto one section of Act. No. 4051, while approving the rest of the bill, we are not without the aid of the construction placed on his action by both legislative and executive departments. That the Philippine Legislature intended Act No. 4051 to be an appro-

priation measure with various items is apparent from a reading of section 12 thereof whereby the legislature anticipated the possibility of a partial veto of the bill by the Chief Executive. Not only this, but after the Chief Executive took action, the legislature made no attempt to override the veto or to amend the law to bring into being the section which the Governor-General had eliminated. Then the same question came again before the executive department, and all of its officials united in sustaining the validity of the Governor-General's veto.

While contemporaneous construction is not decisive for the courts, yet where a construction of statutes has been adopted by the legislative department and accepted by the various agencies of the executive department, it is entitled to great respect. It is our understanding that it has been the practice of the Chief Executive in the interpretation of his constitutional powers to veto separate items in bills analogous to that before us, and that this practice has been acquiesced in previously without objection, so that it would require a clear showing of unconstitutionality for the courts to declare against it. Since, therefore, legislative intent and executive purpose is evident, it devolves upon the judiciary to give deferential attention to the attitude assumed by the other two branches of the Government.

Viewed from another direction, there can be no doubt that Act No. 4051 is an appropriation bill. That is manifest from its provisions, and particularly from section 10 by which the necessary sum to carry out the purpose of the Act was "hereby appropriated out of any funds in the Insular Treasury not otherwise appropriated." It has, however, been faintly suggested that by an appropriation bill is meant a general appropriation bill. We are shown nothing substantial to support this allegation. Un-

like in other constitutions, the word "general" was omitted, and we presume intentionally, from the Organic Act and the Constitution. Under such conditions, the courts would not be authorized to insert a word and by so doing amend the law.

The same considerations hold true with regard to the question of whether or not there was a particular item which the Governor-General could validly veto. No further action by the legislature was contemplated. The accounting officers would have experienced no diffuculty in setting up the different items provided for under Act No. 4051. It would have been a facile matter to eliminate the money needed to make section 7 thereof effective. The Chief Executive had the right to object to the expenditure of money for a specified purpose and amount without being under the necessity of and at the same time refusing to agree to other expenditures which met with his entire approval, and that intention was unequivocably expressed.

We have gone to the trouble to examine all of the authorities cited by the parties and other authorities not brought to our attention by them. It will be found that in practically all of these cases there was a conflict between the legislative and executive departments which the judiciary had to decide. Here there is no such conflict, but unison between the two. Here on the contrary the judiciary is asked to take the initiative and to restore a section to a law against the explicit confirmation of executive authority by the legislature and against explicit action taken by the Chief Executive. In our opinion, it was never intended by a mere process of reasoning, however plausible, for the courts to breathe life into a portion of an Act which has not been given life by the other departments of the government acting in conformity with the consti-

tution.

Deciding, therefore, the main issue as requested by the petitioner and appellant, we are constrained to rule against him and to hold that the veto by the Governor-General of section 7 of Act 4051 was in conformity with the legislative purpose and the provisions of the Organic Act. For this reason, the judgment brought on appeal will be affirmed, without special pronouncement as to the costs in either instance.

GEO. A. MALCOLM

WE CONCUR:

RAMON AVANCEÑA
JOSE A. SANTOS
JOHN A. HULL
CARLOS A. IMPERIAL
ANACLETO DIAZ
CLARO M. RECTO

VILLA REAL, J., dissenting:

The phrase "any particular item or items of an appropriation bill" used in Sec. 19 of the Jones Law refers to an appropriation bill which is composed of several items of appropriation and not to one which contains only an item of appropriation.

Act No. 4051, as its title indicates, is "a... Act to provide for the payment of retirement gratuities to officers and employees of the Insular Government retired from the service as a result of the reorganization or reduction of personnel thereof, including the justices of the peace who must relinquish office in accordance with the provisions of Act Numbered Thirty-eight hundred and ninety-nine, and for other purposes". In other words, said act is a gratuity law, appropriating in its Sec.

10 the necessary sum to pay the gratuities therein granted.

Outside of Sec. 10 there is no other provision or item appropriating any other sum of money which may be considered an item of an appropriation.

Paragraphs a, b, and c of Sec. 1 classify the officers and employees who shall be entitled to gratuity and establish the rate thereon according to salary and years of service.

Sec. 2 establishes the preference in the separation and retirement of employees.

Sec. 3 determines the salary on which the gratuity should be based.

Sec. 4 gives the separated or retired employee and officer the choice between the present gratuity law and other gratuity laws under which they may be entitled to gratuity.

Sec. 5 designates the person to whom payment of gratuity shall be made in case of death.

Sec. 6 establishes the conditions under which a separated or retired officer or employee under the law may be reappointed.

Sec. 7 extends the benefit of the law to justices of the peace under certain conditions.

Sec. 8 provides that the offices and positions created shall be considered abolished ipso facto, with certain exceptions.

Sec. 9 excludes from the benefit of the law officers and employees who have voluntarily retired.

Sec. 10 appropriates the necessary sum for the payment of the gratuities.

Sec. 11 fixes the dates on which the law shall take effect.

Sec. 12 provides that the disapproval by the Governor-General of any section or provision of the act, or the declaration of unconstitutionality of the same shall not affect the other sections.

It will be seen that none of the sections above enumerated, except Sec. 10, contains any appropriation of money.

All the twelve sections of Act No. 4051, with the exception of Sec. 10, contain only conditions under which the money appropriated in said sec. 10 may be paid. If this is true, the vetoing by the Governor-General of Sec. 7, which extends the gratuity payment in said law to justices of the peace, is unauthorized by the Constitution because, as stated above, it contains no appropriation of money but a mere designation of the officers to whom the money appropriated may be made.

In the case of State vs. Holder, 76 Miss., 158, 23 So. Rep., 643, the question was whether the following endorsement and qualified approval of "An act to appropriate money for the support and maintenance of the Industrial Institute and College for the years 1898 and 1899," was constitutional or not:

> I approve that part of this bill preceding the word 'provided', in the first section; and I approve the suggestion in said section that by-laws provide for equal dormitory privileges to all pupils, whether taking industrial or academic course, single or together; and I approve that part of said section providing for the expenditures of said money under the direction or approval of the trustees, and for report thereof to the legislature; and I approve section 2. The other parts, by authority of section 73 of the state constitution, I disapprove."

Sec. 73 of the Constitution of the State of Mississippi provides as follows:

SEC. 73. The governor may veto parts of any appropriation bill, and approve parts of the same and the portions approved shall be law.

The law in question reads as follows:

An Act to appropriate money for the support and maintenance of the Industrial Institute & College for the years 1898 and 1899.

SECTION 1. Be it enacted by the legislature of the state of Mississippi, that the following sums of money be and the same are hereby appropriated out of any money in the treasury and not otherwise appropriated, for the support and maintenance of the Industrial Institute & College:

For salaries of teachers and officers:

For the year 1898	$20,490.00
For the year 1899	20,490.00
For extending sewer	1,600.00
For painting building and repairs	1,600.00
Trustees' meetings, commencement exercises, printing and etc. etc.	800.00

All of said amounts to be drawn by draft of the president of the college, approved by the governor and the auditor of public accounts, and the auditor shall issue his warrant on the state treasurer for the said several sums: provided that no part of the money hereby appropriated for wages or salaries shall be available unless the board of trustees shall first adopt and enact rules and by-laws to the following effect: First. Conferring upon the president of the college the power to recommend to the board of trustees all the teachers who may hereafter be employed, and to select and remove other employees who are not teachers, and giving the president the authority for sufficient cause in his discretion to remove or suspend any member of the faculty subject to the approval of the trustees. Second. Confering upon the president of the college subject to the approval of the trustees to arrange and specify the course of study and to fix the schedule of studies and classes and to establish rules of discipline for the government of the pupils. Third. By-laws providing for equal dormi-

tory privileges to all pupils whether taking industrial or academic courses, singly or together, and by-laws to enforce the faithful discharge of duties of all officers, professors or employees, and before the auditor shall issue any warrant under this act, the board of trustees shall file with the auditor a certified copy of their action complying with the above conditions. All of said money to be expended under the direction or approval of the trustees of the college, and a report of the expenditures made to the legislature.

In deciding the case the Supreme Court of Mississippi said in part the following:

Section 73 of the constitution relates to general appropriation bills, or those containing several items of distinct appropriations; that is to say, special appropriation bills, with distinct items of appropriations. It applies to such as are made up of parts, and consists of portions separable from each other as appropriations. It was not designed to enable the governor to veto objectionable legislation in appropriation bills, for that is provided for in section 69. x x x.

The same Court, in another portion of the decision, said the following:

x x x x The signing of the bill by the governor was qualified in the act and on the enrolled bill, and did not become law in part because it was not an approval of parts and disapproval of parts of such bill, as is in view in section 73 of the constitution; the bill in this case, in the parts vetoed, not being an appropriation bill, within its meaning, and not being a veto of parts of distinct and separable appropriations. To hold that the bill became law as a whole would be to make it so without the governor's approval, and in the face of his disapproval, of the conditions. Both legislative declarations and executive approval are essential prerequisites to the enactment of any law.

The action of the governor having been unconstitutional, and therefore void, his action in dealing with the bill was a nullity; but, the legislature having adjourned

within five days after the presentation of the bill to the governor, the bill, in legal contemplation, must be held to be yet in the hands of the governor, and may become law, unless sent back by him within three days after the beginning of the next session of the legislature. x x x

On the same principle and for the same reason the veto of the Governor-General of Sec. 7 of Act No. 4051 which is not an item of appropriation is null and void as in excess of the power granted to him by Sec. 19 of the Jones Law.

The fact that Sec. 12 of Act No. 4051 has provided that "If, for any reason, any section or provision of this Act is disapproved by the Governor-General or is challenged in a competent court and is held to be unconstitutional or invalid, none of the other sections or provisions hereof shall be affected thereby and such other sections and provisions shall continue to govern as if the section or provision so disapproved or held invalid had never been incorporated in this Act," could not have rendered valid and constitutional the disapproval by the Governor-General of said Sec. 7; for the only power which the legislature has in case a bill is vetoed by the Governor-General is to override said veto by a two-thirds vote of its members and it cannot ratify or validate an invalid veto because of its unconstitutionality.

It is suggested in the majority opinion that the Governor-General having vetoed Sec. 7 of Act No. 4051 and the legislature not having overriden said veto the presumption is that the act of the Governor-General was constitutional and this Court must respect said implied approval. If such doctrine should prevail, then the executive may encroach upon the powers of the legislature, and if the latter should acquiesce in said encroachment either by

sanctioning it in the bill which is the subject of encroachment or by failing to override said veto, and the courts must respect such encroachment when the constitutionality of said bill is put in question, then the judicial branch of the government instead of being the guardian of the Constitution will become an accomplice to its violation, and the rights of the people will have no protection.

For the foregoing reasons, I am of the opinion: First, that while Act No. 4051 contains an appropriation to give it effect, it is not an "appropriation bill" containing itemized appropriations and therefore is not one which the Governor-General can veto under the last paragraph of Sec. 19 of the Jones Law; Second, that Sec. 7 of Act No. 4051, which extends to justices of the peace the gratuity granted in said act, is a condition for the payment of the money appropriated in Sec. 10 thereof and not an "item" of appropriation, and, therefore, the disapproval of the same by the Governor-General is unconstitutional and as such null and void; and Third, that the proviso contained in Sec. 12 of Act No. 4051 to the effect that the disapproval of any of its sections by the Governor-General shall not affect the rest of the bill, did not and could not validate an unconstitutional exercise of the veto power.

It is, therefore, the opinion of the undersigned that the decision of the lower court should be reversed and the writ granted.

ANTONIO VILLA-REAL

We concur in the dissenting opinion of Mr. Justice Villa-Real:

(Sgd.) J. C. VICKERS
(Sgd.) LEONARD S. GODDARD
(Sgd.) GEORGE C. BUTTE

On January 21, 1936, the following motion for reconsideration was filed:

(CAPTION AND TITLE OMITTED)

URGENT MOTION FOR RECONSIDERATION

Comes now plaintiff in the above entitled cause, by his undersigned attorney, and to this Honorable Court, respectfully prays for a reconsideration of the decision rendered and promulgated this 18th day of January, 1936; and at the same time prays that the above entitled case be again set for argument by counsel of record, in view of the important and far reaching effects of the questions and issues involved and of the reasons herein adduced in this motion in support of petitioner-appellant's claim.

ARGUMENT

At first glance, it would seem that the question herein involved is unimportant. In fact, when this case was first argued before this Court, the importance of the question raised was not perceived by the members of the Court. However, it apparently had assumed a threatening importance and had finally resulted in a divided opinion of this Honorable Court. It is unfortunate, indeed, for this country, that a question wherein is involved the very safety of the foundations of our so-called republican form of government should not receive due importance and that microscophic attention that it rightly deserves.

We have examined carefully the decision of the majority of this Court and we have analyzed every word therein contained. More than ever we are convinced of the importance of the question involved to the safety of the very foundations of our reputed republican form of government; of the extent of the powers of the executive and of the safety of those rights guaranteed to every citizen. In fact, the decision undertook to interpret the meaning of Article VI, section 2 of the constitution of the Philippine Commonwealth under which will be exercised the powers of the executive as interpreted by the majority opinion of this Court.

In our brief, we raised the following questions of law, to wit:

> **1. That Act 4051 is not "an appropriation bill" within the meaning of section 19 of the Jones Law and that the "appropriation bill" mentioned therein refers to the general appropriation bill or special appropriation bills with distinct items of appropriation.**
>
> **2. That even if granting, for the sake of argument, that Act 4051 is an "appropriation bill", sec. 7 of said Act 4051 is not "an item of an appropriation bill" within the meaning of sec. 19 of the Jones Law.**
>
> **3. That section 12 of Act 4051 has no effect whatsoever upon the veto by the Governor-General of section 7 of Act 4051.**

In disposing of the first question of law raised, the majority opinion of this court said:

> **"x x x It has, however, been faintly suggested that by an appropria-**

> **tion bill is meant a general appropriation bill. We are shown nothing substantial to support this allegation. Unlike in other constitutions, the word "general" was omitted, and we presume intentionally, from the Organic Act and the Constitution. Under such conditions, the courts would not be authorized to insert a word and by so doing amend the law."**

In answer to the above, we respectfully call the attention of this Honorable Court to the case of State vs. Holder, 76 Miss., 158, 23 SO. Rep., 643, cited in our brief, pages 26-28, and in the dissenting opinion of Justice Villa-Real. In said case, it will be found that the constitution therein involved provides as follows:

"Sec. 73. The Governor may veto parts of any appropriation bill, and approve parts of the same, and the portions approved shall be law."

It is submitted that the above is substantially the same as the provision of section 19 of the Jones Law and yet, the Court, in a scholarly decision, declared that "Sec. 73 of the constitution relates to general appropriation bills, or those containing several items of distinct appropriations; that is to say, special appropriation bills, with distinct items of appropriations. It applies to such as are made up of parts, and consists of portions separable from each other as appropriations."

The majority opinion rejects appellant's contention that sec. 19 of the Jones Law refers to general appropriation bills or special appropriation bills with distinct items of appropriations and says that nothing substantial to support said allegation has been shown. Apparently the majority opinion did not take into account the history of this special

veto power of the executive as clearly shown in said case of State v. Holder, supra, and of the construction given to the same.

In regard to the second question of law, the majority opinion held that section 7 of Act 4051 is an "item" within the meaning of sec. 19 of the Jones Law. The majority opinion cites as authorities, State v. Moore, 1896, 58 Neb. 88; Callaghan v. Boyce, 1915, 17 Ariz. 433.

In our brief, we contended that section 7 of Act 4051 is not an "item" because said section is not itself an appropriation. We cited as authorities, Commonealth v. Barnett, 199, Pac. 161, 48 Atl. 976 and Callaghan vs. Boyce, (1915) 17 Ariz. 433. In said two cases, the court held that the term "item" as used in the constitution means "the particulars, the details, the distinct and separable parts of the appropriations."

We invite the attention of this Honorable Court to the decisions in the cases cited. **We invite the majority to examine carefully, minutely and conscientiously the decisions referred to** and the distinguished majority will not find in said decisions support for its ruling that the term "item" means "the particulars, the details, the distinct and several parts of **the bill.**"

In this connection, we also call the attention of this Honorable Court to the decisions quoted by the Solicitor-General in his brief, pages 5-6, re cases of Commonwealth v. Barnett and Callaghan v. Boyce, supra. The quotations were taken word for word from syllabi of decisions and not from decisions which support our allegation. Evidently the majority opinion was misled by the quotations by the Solicitor-General. Precisely, those cases referred to support our contention and specifically

declare that the term "item" means "the particulars, the details, and **severable parts of the appropriations." We invite this Court to examine carefully the decisions in those two cases if they support the majority opinion.** Said section 7 of Act 4051, not being itself an appropriation, is not an "item" within the meaning of the constitution.

PURPOSE AND PHILOSOPHY OF CONSTITUTIONAL PROVISION

The special veto power of the executive granted by the constitution to veto an item or items of an appropriation bill was designed with a view to guarding against the evils of omnibus appropriation bills, securing unrighteous support from diverse interests, and to enable the chief executive to approve and make law some appropriations, and to put others to the test of receiving a two thirds vote of the legislature as the condition of becoming law. (State v. Holder, 76 Miss. 158, 23 SO 643).

The constitutional provision, in regard to the special veto power of the Governor-General, therefore, is clear and plain in its purpose. The power given under it to the executive to veto in part a bill is definitely and clearly confined, limited and restricted to appropriation bills only. This is very plainly seen in the constitutional grant itself. Under the principle EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS the framers of the constitutional provision in question have clearly revealed the intent, the purpose and the philosophy of this constitutional grant of power to the executive in regard to the special veto power. Hence, this special veto power is clearly, definitely and strictly confined to matters of appropriations. But the ma-

jority opinion would interpret the word "item" to mean any part of a bill which is not in itself a distinct appropriation. We submit such an interpretation is a rank heresy against the purpose, the intent and the philosophy of the constitutional provision in question. It is illogical; it is inconsistent. Such an interpretation would make a mockery of the constitutional provision in question. It would put to naught the very intent, the purpose, the philosophy behind the constitutional grant of special veto power. **It would mean the giving to the executive a power which is plainly excluded in the very constitutional grant.** It would mean, in effect, giving to the executive the power to veto non-appropriation matters which is plainly denied him under the very constitutional provision in question.

In connection with the third question of law and the majority opinion regarding said section and upon which the decision of the majority is predicated, we quote from the dissenting opinion the following:

"It is suggested in the majority opinion that the Governor-General having vetoed Sec. 7 of Act No. 4051 and the legislature not having overridden said veto the presumption is that the act of the Governor-General was constitutional and this Court must respect said implied approval. If such doctrine should prevail, then the executive may encroach upon the powers of the legislature, and if the latter should acquiesce in said encroachment either by sanctioning it in the bill which is the subject of encroachment or by failing to override said veto, and the courts must respect such encroachment when the constitutionality of said bill is put in question, then the judicial branch of the government instead of being the guardian of the Constitution will become an accomplice to its violation, and the rights of the people will have no protection."

DISASTROUS CONSEQUENCES OF MAJORITY OPINION

The interpretation given by the majority to the constitutional provision in question is fraught with the gravest consequences to the government of the Commonwealth and the future Philippine Republic. It is respectfully submitted that said interpretation has opened wide the doors to connivance between an unscrupulous chief executive and a supine legislature to defeat the form of government established by the constitution of a strict separation of powers between the three departments of the government. It is more than that. Henceforth, the chief executive will be omnipotent, because he will have practically the same legislative power as the very Legislature, and we shall have a condition of things never contemplated and appalling in its possible consequences. For it is not beyond possibility that, in order to give the President a chance to use his veto according to the constitution, a section that appropriates money, however insignificant and valueless it may be, should be inserted in any kind of bill passed by the Legislature, and thus the President should have the right to veto any section in said bill under the special power to veto "an item or items of an appropriation bill". It will certainly be a dangerous delegation of legislative power pure and simple, if not an abandonment of the legislative power to the chief executive. And in such a situation, supposing that the framers of the constitution intended the proviso in question to be interpreted that way, there is no necessity for any limitation of the veto power of the chief executive. There will be no necessity for the existence of the proviso as to the veto power of the President. It is because we cannot conceive of any

bill, which cannot be turned into "an appropriation bill" by the simple expedient of inserting therein a section or part, however insignificant, that appropriates money.

We earnestly pray of this Court to allow the undersigned attorney to argue again this case before this Court. The very safety of the foundations of our government is involved. This court cannot afford to just ignore the tremendous possibilities of the majority opinion without giving careful consideration to every phase of the question. **No one stands to lose, everyone is bound to gain.**

For all of the foregoing, therefore, appellant respectfully prays that this Court reconsider its decision in the above entitled cause, and that it be again set for hearing so that the question can better be thoroughly and exhaustively examined, argued and threshed out.

Manila, P. I., January 18, 1936.

MARIO BENGZON
Atty. for Petitioner-Appellant,
430 Rizal Avenue, P.O. Box 449
Manila

On January 24, 1936, the Supreme Court passed the following resolution:

> "The Court sitting **in banc** having under consideration the motion for reconsideration of the decision and judgment in case G. R No. 42821, Juan Bengzon vs. The Secretary of Justice et al., promulgated on January 18, 1936, and after full discussion, the Chief Justice and Justices, Hull, Imperial, Diaz, and Recto voted to deny said motion for reconsi-

deration, Justices Villa-Real, Vickers, Butte, and Goddard dissenting."

On January 28, 1936, the following exception and notice of intention to appeal to the Supreme Court of the United States was filed:

EXCEPTION AND NOTICE OF INTENTION TO APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Comes now Juan Bengzon, petitioner and appellant in the above entitled action, by his undersigned attorney, and hereby excepts to the order of this Honorable Court of date the 24th day of January, 1936, overruling his motion for a reconsideration of the decision rendered in this case, and also excepts to the final judgment entered herein, and hereby gives notice of his intention to apply to the Supreme Court of the United States for a writ of certiorari for the review of the decision and judgment of this Court entered in this case, and respectfully requests that the record of this case be retained in this Court pending the preparation of said petition and of the record to accompany the same; further, he also respectfully prays that he be not required to post a supercedeas bond, in view of the fact that there is no judgment the execution of which is sought to be stayed.

Manila, P. I., January 25, 1936.

MARIO BENGZON
Atty. for Petitioner-Appellant
430 Rizal Avenue, P. O. Box 449
Manila

On January 29, 1936, the Supreme Court passed the following resolution:

"Upon consideration of the motion of the attorney for the petitioner and appellant in case G. R. No. 42821, Juan Bengzon vs. The Secretary of Justice and Insular Auditor, excepting to the order of this court of January 24, 1936, overruling his motion for reconsideration of the decision as well as to the final judgment entered therein, and giving notice of his intention to apply to the Supreme Court of the United States for a writ of certiorari for the review of the decision and judgment of this court, and praying that the record of said case be retained in this court pending the preparation of said petition without requiring him to file a supercedeas bond. IT IS ORDERED that the exception and notice of appeal be noted; and it appearing that there is no judgment the execution of which is sought to be stayed, the prayer of the motion is hereby GRANTED."

On February 7, 1936, the clerk of the Supreme Court of the Philippine Islands entered the final judgment which reads as follows:

(CAPTION AND TITLE OMITTED)

The Court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties for decision, after consideration thereof by the Court upon the record, its decision and order for judgment having been filed on the 18th day of January, A. D. nineteen hundred and thirty-six;

By virtue thereof it is hereby adjudged and decreed that the judgment of the Court of First Instance of Manila, dated the 25th day of August, nineteen hundred and thirty-four, and from which

the above-entitled appeal was taken, be, and the same is hereby, affirmed, without special pronouncement as to the costs in either instance.

(Sgd.) V. ALBERT
Clerk of the Supreme Court of the
Philippine Islands

Certified correct:

Clerk, Supreme Court

UNITED STATES OF AMERICA
COMMONWEALTH OF THE PHILIPPINES
IN THE SUPREME COURT

I, V. Albert, clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing 60 printed pages contain a true and correct translation and transcription of the record of the case entitled, "Juan Bengzon, Petitioner-Appellant vs. Secretary of Justice and Insular Auditor, Respondents-Appellees" concerning payment of gratuity to Justices of the Peace, bearing No. 42821 of the docket of this Supreme Court.

In witness whereof, I have hereunto set my hand and affixed the seal of the Supreme Court of the Philippine Islands this 5th day of May, A.D. 1936.

V. ALBERT
Clerk, Supreme Court of P.I.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 12, 1936

The petition herein for a writ of certiorari to the Supreme Court of the Philippine Islands is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

SUPREME COURT OF THE UNITED STATES

No. 214

——Term——

Juan Bengzon,
Petitioner,

—versus—

The Secretary of Justice and the Insular Auditor of the Philippine Islands,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF THE PHILIPPINES AND BRIEF IN SUPPORT THEREOF

ILAYA PRESS

TABLE OF CONTENTS

	PAGES
1. PETITION FOR WRIT OF CERTIORARI	1–10
a. Statement of Facts	1– 3
b. Reasons for the Allowance of the Writ	5– 7
c. The issues of Law	7
d. Discussion	7–10
a. FIRST ISSUE OF LAW	7–10
2. SECOND ISSUE OF LAW	10
2. BRIEF IN SUPPORT	11–30
a Statement of Facts and Summary of the Case	12–14
b. Specification of Errors	14–15
c. Summary of Argument	15
d. Argument	15–30
1. ERROR I	15–22
2. ERROR II	22–28
3. ERROR III	28–30
e. Prayer	31

TABLE OF CASES

1. Black & White Taxicab Co. v. Standard Oil Co., 218 Pac., 139, 25 Ariz. 381	24–27
2. Callaghan v. Boyce, (1915) 17 Ariz. 433, 153 Pac. 773	23, 25
3. Commonwealth v. Barnett, 199 Pa. 161, 48, Atl. 976, 55 L. R. A. 882	18, 23, 24
4. Fairfield v. Porter, 25 Ariz., 146, 214 Pac. 319	17–27
5. Fulmore v. Lane, 104 Tex. 499, 140 S. E., 405-421, 1082	25
6. Mennefee v. Askew, 25 Okl. 623, 107 Pac. 159, 27 L. A. R. (N.S.) 537	23
7. People v. Brady, 277 111. 124, 115 N.E., 204	25
8. State v. Holder, 76 Miss 158, 28 SO, 643	9, 21, 26, 27

STATUTES

1. The Act of Congress of August 29, 1916 (Jones Law)	8, 9, 13, 14, 16, 18, 21
2. Article VI, Sec. 2, Constitution of the Commonwealth of the Philippines	8, 10, 22
3. Act 4051 of the Philippines Legislature	8, 10, 12, 14, 18, 21

IN THE
SUPREME COURT OF THE UNITED STATES

NO. _____

_____TERM 19_____

JUAN BENGZON,
Petitioner,

– vs. –

THE SECRETARY OF JUSTICE
and
THE INSULAR AUDITOR
OF THE PHILIPPINE ISLANDS
Respondents.

PETITION FOR CERTIORARI

To the Supreme Court of the United States:

Your petitioner respectfully prays for a writ of certiorari to review the judgment of the Supreme Court of the Commonwealth of the Philippines in the case of Juan Bengzon, petitioner-appellant v. The Secretary of Justice and Insular Auditor, respondents-appellees (G.R. 42821). The decision of the Supreme Court of the Philippine Islands was promulgated January 18, 1936; final judgment was entered February 7, 1936. Your petitioner submits the following statement of facts:

I.

Juan Bengzon, the petitioner, was in the Government service as Justice of the Peace for the municipality of Lingayen, Pangasinan, P. I., from March 7, 1912, to January 14, 1933, on which latter date

he was retired from the service by reason of Act No. 3899 of the Philippine Legislature, which provides that the Justices of the Peace who have reached the age of 65 years shall be automatically retired from the service. On February 21, 1933, the Philippine Legislature passed Act 4051 (Exhibit A, Record p. 4-8), commonly known as the Gratuity Law, which provides for the retirement of certain government employees with gratuity depending upon the length of their service. Section 7 of said Act 4051 specifically provides that the Justices of the Peace who must be retired under Act 3899 shall be entitled to the benefits of the Gratuity Law, Act 4051. The Governor-General of the Philippine Islands, Honorable Theodore Roosevelt, approved Act 4051, with the exception of said section 7 of said Act 4051. (Record, pp. 4-8).

II.

The petitioner, Juan Bengzon, duly filed his application for his gratuity, in accordance with Act 4051, with the Governor-General, the Secretary of Justice and the Insular Auditor, but his claim for gratuity was denied by all these officials, on the ground that section 7 of Act 4051 was vetoed by the Governor-General, (Record, pp. 18-29). On March 7, 1934, petitioner filed an action for a writ of mandamus in the Court of First Instance of Manila, P. I., against the Secretary of Justice and Insular Auditor, present respondents herein. The petitioner contended, in his action, that section 7 of Act 4051 is in force as law, because the veto by the Governor-General of said section was unconstitutional, the same being against the provision of section 19 of the Act of Congress of August 29, 1916, or the Jones Law. (Record, pp. 1-3).

III.

The case was submitted by the parties on a stipulation of facts (Record, pp. 18-29) and on August 25, 1934, the Court rendered a decision against the petitioner. (Record, pp. 29-35). The Court held that the validity of the veto by the Governor-General of said section 7 of Act 4051 could not be raised or determined in the cause because the Governor-General was not a party to the case. From that decision, petitioner duly appealed to the Supreme Court of the Philippine Islands. (Record, pp. 35-36)

IV.

The cause was duly docketed in the Supreme Court of the Philippine Islands, bearing No. 42821 of the General Register, petitioner and appellant assigning the following errors:

1. The Court A QUO erred in declaring that the question of the validity and the constitutionality of the veto by the Governor-General of section 7 of Act 4051 cannot be determined in this present case because the Governor-General is not included as a party to it, and, thus in dismissing plaintiff's action with costs.

2. The Court A QUO erred in not declaring that the veto by the Governor-General of section 7 of Act 4051 is unconstitutional and invalid, hence said section 7 of Act 4051 is in full force and effect as law.

3. The lower Court erred in not declaring that the plaintiff-petitioner is entitled to his gratuity under said section 7 of Act 4051.

4. The Court A QUO erred in not granting plaintiff-appellant's petition for the issuance of a writ of mandamus directed against defendants-respondents. (Record, pp. 35-36)

V.

January 18, 1936, the Supreme Court of the Philippine Islands promulgated its decision declaring that Act 4051 is an appropriation law and that section 7 of said Act 4051 is an "item of an appropriation bill" within the meaning of section 19 of the Act of Congress of August 29, 1916, or Jones Law, as well as of Article VI, section 2, of the Constitution of the new Philippine Commonwealth, and that the Philippine Legislature, not having overriden the veto and the Executive Department of the government having accepted said veto as valid, the presumption is that the act of the Governor-General was constitutional and the Court must respect said implied approval, hence the veto by the Governor-General of said section 7 of Act 4051 is valid and constitutional and, therefore, petitioner is not entitled to the gratuity. The judgment of the lower Court was affirmed, four justices dissenting. (Record, pp. 36-50)

VI.

January 29, 1936, the Supreme Court of the Philippine Islands, upon consideration of a motion filed by petitioner-appellant, ordered that the record be retained pending the preparation of a petition to the Supreme Court of the United States for a writ of certiorari. (Record, p. 59).

February 7, 1936, the final judgment of the Supreme Court of the Philippine Islands was entered, as follows:

The Court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties for decision, after consideration thereof by the Court upon the record, its

decision and order for judgment having been filed on the 18th day of January, 1936;

By virtue thereof it is hereby adjudged and decreed that the judgment of the Court of First Instance of Manila, dated the 25th day of August, 1934, and from which the above entitled appeal was taken, be, and the same is hereby, affirmed, without special pronouncement as to costs in either instance. (Record, pp. 59-60).

REASONS FOR THE ALLOWANCE OF THE WRIT

Your petitioner urges the following reasons for the allowance of the writ of certiorari herein prayed for:

I.

This litigation involves the interpretation of section 19 of the Act of Congress of August 29, 1916, or the Jones Law, and of Article VI, section 2, of the constitution of the present Commonwealth of the Philippines.

II.

The Supreme Court of the Philippine Islands, in its decision in the above entitled cause, in effect, held that the Chief Executive of the Philippine Islands may, under section 19 of the Act of Congress of August 29, 1916, or the Jones Law, and of Article VI, section 2, of the constitution of the Commonwealth of the Philippines, veto any part or parts of any bill which is not an appropriation bill or that he may veto any section or part of any appropriation bill which is not of itself an appropriation.

III.

The decision of the Supreme Court of the Philippine Islands in the above entitled cause is far reaching in its effects on present day legislation in the Islands, involving as it does the power of the Chief Executive of the Commonwealth of the Philippines to veto any part or parts of any bill passed by the legislature.

IV.

Act 4051 of the Philippine Legislature (Exhibit A, Record, pp. 4-8), though providing, in one of its sections, that the necessary sum to carry out the purposes of the act is appropriated, is not "an appropriation bill" within the meaning of section 19 of the Act of Congress of August 29, 1916, or the Jones Law, and of Article VI, section 2, of the constitution of the Commonwealth of the Philippines and section 7 of Act 4051 of the Philippine Legislature which provides that the justices of the peace retired under Act 3899 are also entitled to the benefits of the Gratuity Act (Act 4051) is not "an item of an appropriation bill" within the meaning of section 19 of the Act of Congress of August 29, 1916, or the Jones Law, and of Article VI, section 2, of the constitution of the Commonwealth of the Philippines in that said section of Act 4051 is not, of itself, an appropriation.

V.

The Supreme Court of the Philippine Islands erred in holding that the veto by the Chief Executive of section 7 of Act 4051, not having been overriden by the Philippine Legislature and the executive department having acquiesced to the same, the judicial branch must respect said veto, hence it is valid and constitutional, thus, in effect, subordinating the judicial department to the other branches of the gov-

ernment and making the interpretation of the constitution dependent upon the attitude and conduct of the executive and legislative branches of the government.

THE ISSUES OF LAW

1. Is Act 4051 of the Philippine Legislature an appropriation bill within the meaning of section 19 of the Act of Congress of August 29, 1916, or the Jones Law, and of Article VI, section 2, of the constitution of the Commonwealth of the Philippines which provide that the chief executive may veto "any item or items of an appropriation bill"?

2. Section 7 of Act 4051 provides:

"The justices of the peace who must relinquish office during the year nineteen hundred and thirty-three in accordance with the provisions of Act Numbered Thirty-eight hundred and ninety-nine, shall also be entitled to the gratuities provided for in this Act."

The Chief Executive approved Act 4051 with the exception of said section 7 which he vetoed.

The issue presented is:

Is said section 7 of Act 4051 "an item of an appropriation bill" within the meaning of section 19 of the Jones Law and of Article VI, Section 2, of the constitution of the Commonwealth of the Philippines and is the veto by the Governor-General of said section valid and constitutional?

DISCUSSION

FIRST ISSUE OF LAW

Act 4051 of the Philippine Legislature has this for title:

> **"An Act to provide for the payment of retirement gratuities to officers and employees of the insular government retired from the service as a result of reorganization or reduction of personnel thereof, including the justices of the peace who must relinquish office in accordance with the provisions of act numbered thirty-eight hundred and ninety-nine, and for other purposes."**

Act 4051 contains 12 sections. A careful examination of the act shows that every section of the act, except section 10, treats of the gratuity granted by the Act, but does not mention any funds or money of the government, much less appropriate any sum from the treasury for any purpose whatsoever.

Section 10 of the act, however, provides:

> **"The necessary sum to carry out the purposes of this Act is hereby appropriated out of any funds in the Insular Treasury not otherwise appropriated."**

It is submitted that Act 4051 of the Philippine Legislature is not "an appropriation bill" within the meaning of section 19 of the Jones Law and of Article VI, section 2, of the constitution of the Commonwealth of the Philippines. It is a gratuity act, no more, no less. It is a gratuity act and not an appropriation act in spite of section 10 thereof. The mere fact that section 10 of Act 4051 makes an appropriation is merely a collateral incident, a necessary and concomitant proviso to carry out the purpose of the act, an indispensable appendage to the accomplishment of the object of the Legislature embodied in the Act, and that is, to grant gratuity to certain officers and employees of the government. In other words, said section 10 is nothing but a

logical corollary of the other provisions of the act to carry into effect the object of the law. It certainly cannot be denied that said section 10, taken by itself, is an appropriation, but certainly it is not and it cannot be the essence of the act, much less is it the element that gives the act its nature. Consequently, in no sense can it be said and successfully maintained that Act 4051 is an appropriation act.

Assuming, for the sake of argument, that Act 4051 is an appropriation Act, it is respectfully submitted it is not "an appropriation bill" within the meaning of section 19 of the Jones Law and of Article VI, section 2, of the constitution of the Commonwealth of the Philippines.

The phrase "appropriation bill" has a definite meaning in constitutional law. Bearing in mind the history of this proviso as to the special veto power of the chief executive, as well as the purpose behind the existence of said special veto power, the phrase "appropriation bill" can mean no other than a general appropriation bill, or at most, special appropriation bills, with distinct items of appropriations. (State v. Holder, 76 Miss., 158, 23 So. Rep. 643). But certainly, it cannot mean any bill,whatever its purpose, object and subject may be, that happens accidentally to provide in one of its sections a certain appropriation. Such interpretation would be illogical and will surely defeat the very purpose of those responsible for the proviso in question. It would for sure destroy all the safeguards contained in the constitution as to the separation of powers in the government, will make the power of the Chief Executive omnipotent, for then he will have practically the same legislative power as the very Legislature, and we shall have a

condition of things never contemplated and appalling in its possible consequences.

SECOND ISSUE OF LAW

Section 7 of Act 4051 of the Philippine Legislature provides:

> "The justices of the peace who must relinquish office during the year nineteen hundred and thirty-three in accordance with the provisions of Act Numbered Thirty-eight hundred and ninety-nine shall also be entitled to the gratuities provided for in this Act."

It is submitted that said section 7 of Act 4051 is not "an item of an appropriation bill" within the meaning of section 19 of the Jones Law and of Article VI, section 2, of the constitution of the Commonwealth of the Philippines. It is because said section 7, taken by itself, is not an appropriation. Examined carefully, said section 7 is merely a condition or proviso of an appropriation. We submit, the executive cannot veto a condition or proviso of an appropriation *while allowing the appropriation to stand.* That would be affirmative legislation, without even the concurrence of the legislature.

For these reasons we ask the allowance of the writ of certiorari prayed for in this matter.

Respectfully submitted,

PEDRO Y. YLAGAN
Counsel for Petitioner
510 Maria Clara, Manila.
Philippine Islands.

IN THE
SUPREME COURT OF THE UNITED STATES

NO. _____

_____TERM 19_____

JUAN BENGZON,
Petitioner,

– vs. –

THE SECRETARY OF JUSTICE
and
THE INSULAR AUDITOR
OF THE PHILIPPINE ISLANDS,
Respondents.

BRIEF FOR THE PETITIONER

This is a petition for a writ of certiorari under the provisions of Section 7 of the Act of Congress of February 13, 1925 (43 Stat. at L. 940, Anno. Supp. 1925, p. 90); paragraph 6, Section 6 of the Act of Congress of March 24, 1934, (Public No. 127-73rd Congress, Tydings-McDuffie Act c. 84, 48 Stat.456); and paragraph 13, Section I, ARTICLE XVII of the Constitution of the Commonwealth of the Philippines, giving jurisdiction to this Honorable Supreme Court to review upon certiorari the final judgment of the Supreme Court of the Philippine Islands in all cases wherein the Constitution, or any statute or treaty is involved or wherein the controversy exceeds $25,000.00, or wherein the title or possession of real estate exceeding in value the sum of $25,000.00 is involved or brought in question. Under Section 8 of the Act of Congress of February

13, 1925, application for the writ must be made within six months after the entry of the judgment or decree sought to be reviewed.

STATEMENT OF FACTS AND SUMMARY OF THE CASE

Juan Bengzon, the petitioner, was in the Government service as Justice of the Peace for the municipality of Lingayen, Pangasinan, P. I., from March 7, 1912, to January 14, 1933, on which latter date he was retired from the service by reason of Act No. 3899 of the Philippine Legislature, which provides that the Justices of the Peace who have reached the age of 65 years shall be automatically retired from the service. On February 21, 1933, the Philippine Legislature passed Act 4051 (Exhibit A, Record pp. 4-8), commonly known as the Gratuity Law, which provides for the retirement of certain government employees with gratuity depending upon the length of their service. Section 7 of said Act 4051 specifically provides that the Justices of the Peace who must be retired under Act 3899 shall be entitled to the benefits of the Gratuity Law, Act 4051. The Governor-General of the Philippine Islands, Honorable Theodore Roosevelt, approved Act 4051, with the exception of said section 7 of said Act 4051. (Record, pp. 4-8).

The petitioner, Juan Bengzon, duly filed his application for his gratuity, in accordance with Act 4051, with the Governor-General, the Secretary of Justice and the Insular Auditor, but his claim for gratuity was denied by all these officials, on the ground that section 7 of Act 4051 was vetoed by the Governor-General, (Record, pp. 18-29). On March 7, 1934, petitioner filed an action for a writ of man-

damus in the Court of First Instance of Manila, P. I., against the Secretary of Justice and Insular Auditor, present respondents herein. The petitioner contended, in his action, that section 7 of Act 4051 is in force as law, because the veto by the Governor-General of said section was unconstitutional, the same being against the provisions of section 19 of the Act of Congress of August 29, 1916, or the Jones Law. (Record, pp. 1-3)

The case was submitted by the parties on a stipulation of facts (Record, pp. 18-29) and on August 25, 1934, the Court rendered a decision against the petitioner. (Record, pp. 29-35). The Court held that the validity of the veto by the Governor-General of said section 7 of Act 4051 could not be raised or determined in the cause because the Governor-General was not a party to the case. From that decision, petitioner duly appealed to the Supreme Court of the Philippine Islands. (Record, pp. 35-36).

The cause was duly docketed in the Supreme Court of the Philippine Islands, bearing No. 42821 of the General Register, petitioner and appellant assigning the following errors:

1. The Court A QUO erred in declaring that the question of the validity and the constitutionality of the veto by the Governor-General of section 7 of Act 4051 cannot be determined in this present case because the Governor-General is not included as a party to it, and, thus in dismissing plaintiff's action with costs.

2. The Court A QUO erred in not declaring that the veto by the Governor-General of section 7 of Act 4051 is unconstitutional and invalid, hence said section 7 of Act 4051 is in full force and effect as law.

3. The lower Court erred in not declaring

that the plaintiff-petitioner is entitled to his gratuity under said section 7 of Act 4051.

4. The Court A QUO erred in not granting plaintiff-appellant's petition for the issuance of a writ of mandamus directed against defendants-respondents. (Record, pp. 35-36).

On January 18, 1936, the Supreme Court of the Philippine Islands promulgated its decision declaring that Act 4051 is an appropriation law and that section 7 of said Act 4051 is an "item of an appropriation bill" within the meaning of section 19 of the Act of Congress of August 29, 1916, or Jones Law, as well as of Article VI, section 2, of the Constitution of the new Philippine Commonwealth, and that the Philippine Lelgislature, not having overriden the veto and the Executive Department of the government having accepted said veto as valid, the presumption is that the Act of the Governor-General was constitutional and the Court must respect said implied approval, hence the veto by the Governor-General of said section 7 of Act 4051 is valid and constitutional and, therefore, petitioner is not entitled to gratuity. The judgment of the lower Court was affirmed, four justices dissenting. (Record, pp. 36-50).

SPECIFICATION OF ERRORS

ERROR I

THE HONORABLE SUPREME COURT OF THE COMMONWEALTH OF THE PHILIPPINES ERRED IN HOLDING AND DECLARING THAT ACT NO. 4051 OF THE PHILIPPINE LEGISLATURE IS AN "APPROPRIATION BILL" WITHIN THE MEANING OF SECTION 19 OF THE ACT OF CONGRESS OF AUGUST 29, 1916 (JONES LAW) AND OF ARTICLE VI, SECTION

2, OF THE CONSTITUTION OF THE COMMONWEALTH OF THE PHILIPPINES.

ERROR II

THE HONORABLE SUPREME COURT OF THE COMMONWEALTH OF THE PHILIPPINES ERRED IN HOLDING AND DECLARING THAT SECTION 7 OF ACT NO. 4051 OF THE PHILIPPINE LEGISLATURE IS AN "ITEM OF AN APPROPRIATION BILL" WITHIN THE MEANING OF SECTION 19 OF THE ACT OF CONGRESS OF AUGUST 29, 1916, (JONES LAW) AND OF ARTICLE VI, SECTION 2, OF THE CONSTITUTION OF THE COMMONWEALTH OF THE PHILIPPINES.

ERROR III

THE HONORABLE SUPREME COURT OF THE COMMONWEALTH OF THE PHILIPPINES ERRED IN HOLDING AND DECLARING THAT THE VETO BY THE GOVERNOR-GENERAL OF SECTION 7 OF ACT NO. 4051 OF THE PHILIPPINE LEGISLATURE IS VALID AND CONSTITUTIONAL UNDER THE PROVISIONS OF SECTION 19 OF THE ACT OF CONGRESS OF AUGUST 29, 1916 (JONES LAW) AND OF ARTCLE VI, SECTION 2, OF THE CONSTITUTION, OF THE COMMONWEALTH OF THE PHILIPPINES AND IN DENYING TO PETITIONER HEREIN THE REMEDY PRAYED FOR.

SUMMARY OF ARGUMENT

1. Act 4051 of the Philippine Legislature, although containing a provision appropriating a sum of money to give it effect, is not an appropriation act; and granting that said Act 4051 is an appropriation act, it is not an "appropriation bill" within the meaning of section 19 of the Act of Congress of August 29, 1916, (Jones Law) and of Article VI, section 2, of the Constitution of the Commonwealth of the Philippines.

2. Act 4051 is a gratuity bill, no more, no less.

3. Sec. 7 of said Act 4051 is not "an item of an appropriation bill" within the meaning of Sec. 19 of the Act of Congress of August 29, 1916 (Jones Law), because said section is not, by itself, an appropriation. To be an "item" within the meaning of the Act of Congress of August 29, 1916 (Jones Law) and of Article VI, section 2, of the Constitution of the Commonwealth of the Philippines, the section must, by itself, be a distinct and separate appropriation.

4. Said section 7 of Act 4051 of the Philippine Legislature, not being "an item of an appropriation bill" within the meaning of sec. 19 of the Act of Congress of August 29, 1916 (Jones Law), its veto by the Governor-General of the Philippine Islands pursuant to his special veto power to veto "an item or items of an appropriation" is unconstitutional, hence the veto is null and void.

ARGUMENT

ERROR I

THE HONORABLE SUPREME COURT OF THE COMMONWEALTH OF THE PHILIPPINES ERRED IN HOLDING AND DECLARING THAT ACT NO. 4051 OF THE PHILIPPINE LEGISLATURE IS AN "APPROPRIATION BILL" WITHIN THE MEANING OF SECTION 19 OF THE ACT OF CONGRESS OF AUGUST 29, 1916 (JONES LAW), AND OF ARTICLE VI, SECTION 2, OF THE CONSTITUTION OF THE COMMONWEALTH OF THE PHILIPPINES.

Section 19 of the Act of Congress of August 29, 1916 (Jones Law), in regard to the special veto power of the Governor-General, provides: "The Governor-General shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he does not object."

As is well known, the provisions of the Jones Law were patterned if not taken from various federal and state constitutions in the United States and it is a well known fact that the veto power granted the chief executive by the federal and state constitutions was originally based on a similar power exercised by the English sovereign. (Fairfield v. Foster (1923) 25 Ariz. 146, 214 Pac. 319.) Now this power, though exercised by an officer whose functions were principally executive, was essentially legislative in its nature. (1 Blackstone, Com. 361). But this power, conferred by a constitution, must be exercised only in the cases and in the manner provided by that constitution. (Fairfield vs. Foster, supra). This power of the executive granted by the various federal and state constitutions to veto an item or items of an appropriation bill was designed with a view to guarding against the evils of omnibus appropriation bills, securing unrighteous support from diverse interests, and to enable the chief executive to approve and make law some appropriations, and to put others to the test of securing a two thirds vote of the legislature as the condition of becoming law. (State v. Holder 76 Miss. 158, 23 So. 643). It was designed to serve the same purpose as to appropriation bills as that proviso contained in various federal and state constitutions which prohibits a bill to embrace more than one subject and which subject must be expressed in the title of the bill. The provision was designed against omnibus appropriation bills, the same as the latter was designed against omnibus bills. The latter protection is found in section 3, paragraph 17 of the Jones Law which provides "that no bill which may be enacted into law shall embrace more than one subject, and that subject shall be expressed in

the title of the bill." In plain English, the special veto power of the executive was designed to give the executive the right to object to the expenditure of money for a specified purpose and amount, without being under the necessity of and at the same time refusing to agree to another expenditure which meet his entire approval. (Com. etc. v. Barnett 199 Pa. 161, 55 L.R.A., 882, 48 Atl. 976).

Let us examine carefully Act 4051. In its title, it says:

> **"An Act to provide for the payment of retirement gratuities to officers and employees of the insular government retired from the service as a result of reorganization or reduction of personnel thereof, including the justices of the peace who must relinquish office in accordance with the provisions of act numbered thirty-eight hundred and ninety-nine, and for other purposes."**

It contains but 12 sections. A careful examination of the act will show that every section of the act, except section 10, treats of the gratuity granted by the Act, but does not mention any funds or money of the government, much less appropriate any sum out of the treasury for any purpose whatsoever. Section 10 of the act, however, says: "The necessary sum to carry out the purposes of this Act is hereby appropriated out of any funds in the Insular Treasury not otherwise appropriated."

With all due respect for the decision of the Honorable Supreme Court of the Commonwealth of the Philippines, it is respectfully submitted that Act 4051 of the Philippine Legislature is not an "appropriation bill" within the meaning of section 19 of the Act of Congress of August 29, 1916 (Jones Law).

It is a gratuity act, no more, no less. It is a gratuity act and not an appropriation act in spite of section 10 thereof. The mere fact that said sec. 10 makes an appropriation is merely a collateral incident, a necessary and concomitant proviso to carry out the purpose of the act, an indispensable appendage to the accomplishment of the object of the Legislature embodied in the Act, and that is to provide gratuity to certain officers and employees of the government. In other words, said section 10 is nothing but a logical corollary of the other provisions of the Act to carry into effect the object of the law. It cannot be denied and we do not deny it that said section 10, taken by itself, is an appropriation, but certainly it is not and it cannot be the essence of the act, much less is it the element that gives to the Act its nature. Consequently, in no sense can it be said and successfully maintained that Act 4051 is an appropriation act.

But let us assume for the sake of argument that Act 4051 is an appropriation act. Is it an appropriation Act within the meaning of Sec. 19 of the Jones Law? Is it the appropriation act contemplated by the framers of the autonomy act? Can it be successfully maintained that sec. 19 of the Jones Law, in speaking of "appropriation bill", refers to an appropriation bill as the act in question? We do not hesitate to assert that Act 4051, even if we grant for the sake of argument that it is an appropriation act, is not an "appropriation bill" within the meaning of sec. 19 of the Jones Law. We insist that Act 4051 is not the "appropriation bill" contemplated by the framers of the autonomy act. We maintain, and in this we are supported by the other provisions of the Jones Law, the history of this proviso as to the special veto power of the exe-

cutive, as well as the purpose behind the existence of the said special veto power, that the "appropriation bill" as contained in sec. 19 of the Jones Law refers to the general appropriation bill or the annual budget, or at most, to special appropriation bills with distinct items of appropriations. But certainly it can not mean any bill, whatever its purpose, object and subject may be, that happens accidentally to provide in one of its sections a certain appropriation. Such interpretation would certainly be arbitrary and will surely defeat the very purpose of the framers of the autonomy act in including the proviso in question. It would for sure destroy all the safeguards contained in the constitution in regard to the separation of powers in the government, will make the power of the executive omnipotent, for then he will have practically the same legislative power as the very Legislature, and we shall have a condition of things never contemplated and appalling in its possible consequences.

Let us examine American jurisprudence in its interpretation of this very proviso giving special veto power to the chief executive. A painstaking and careful examination of the cases decided by the various federal and state courts in the United States will show that the "appropriation bill" mentioned in the proviso in question has always invariably been taken to mean "general appropriation bills or of special appropriation bills containing several items of appropriations—that is to say, special appropriation bills, with distinct items of appropriations." It has never been interpreted to mean any kind of bill, as the act in question, but general appropriation bills or at least genuine special appropriation bills.

In the case of State ex rel. Teachers & Officers v. Holder 76 Miss. 158, 23 SO 643, this very question was squarely raised. Section 73 of the constitution of Mississippi expressly provides as follows: "SEC. 73. The Governor may veto parts of any appropriation bill, and approve parts of the same, and the portions approved shall be law." The Court, in a scholarly decision and interpreting the special veto power of the Governor as contained in said section 73 of the State constitution, said:

"SEC. 73 of the constitution relates to general appropriation bill, or those containing several items of distinct appropriations—that is to say, special appropriation bills, with distinct items of appropriations. It applies to such as are made up of parts and consists of portions separable from each other as appropriations. x x x"

"x x x The true meaning of sec. 73 is that an appropriation bill made up of several parts —that is,distinct appropriations, different, separable, each complete without the others, which may be taken from the bill without affecting the others, which may be separated into different parts complete in themselves may be approved and become a law in accordance with the legislative will, while others of like character may be disapproved and put before the legislature again, dissociated from the other appropriations."

It is respectfully submitted that the decision of the Honorable Supreme Court of the Commonwealth of the Philippines does not give any satisfactory reason for its interpretation that Act No. 4051 of the Philippine Legislature is an "appropriation bill" within the meaning of section 19 of the Act of Congress of August 29, 1916 (Jones Law).

It is respectfully submitted that the dictum of the Honorable Supreme Court of the Commonwealth of the Philippines in regard to the point is not based upon any solid legal principle and neither does it satisfy.

ERROR II

THE HONORABLE SUPREME COURT OF THE COMMONWEALTH OF THE PHILIPPINES ERRED IN HOLDING AND DECLARING THAT SECTION 7 OF ACT NO. 4051 OF THE PHILIPPINE LEGISLATURE IS AN "ITEM OF AN APPROPRIATION BILL" WITHIN THE MEANING OF SECTION 19 OF THE ACT OF CONGRESS OF AUGUST 29, 1916 (JONES LAW) AND OF ARTICLE VI, SECTION 2, OF THE CONSTITUTION OF THE COMMONWEALTH OF THE PHILIPPINES.

Section 7 of Act 4051 of the Philippine Legislature provides as follows: "The justices of the peace who must relinquish office during the year nineteen hundred and thirty-three in accordance with the provisions of Act Numbered Thirty-eight hundred and ninety-nine, shall also be entitled to the gratuities provided for in this Act." The Honorable Supreme Court of the Commonwealth of the Philippines, in its decision, declared that said section 7 of Act No. 4051 of the Philippine Legislature is an "item of an appropriation bill" within the meaning of section 19 of the Act of Congress of August 29, 1916 (Jones Law) and specifically declared as follows: "An appropriation is the setting apart by law of a certain sum from the public revenue for a specified purpose. An item is the particulars, the details, the distinct and severable parts of the appropriation or of the bill. No set form of words is needed to make out an appropriation

or an item. (State v. Moore, 1896, 50 Neb. 88; Callaghan v. Boyce, 1915, 17 Ariz. 433.)"

It is respectfully submitted that the Honorable Supreme Court of the Commonwealth of the Philippines erred in holding and declaring that said section 7 of Act No. 4051 of the Philippine Legislature is an "item of an appropriation bill" within the meaning of section 19 of the Act of Congress of August 29, 1916 (Jones Law) and of Article VI, Section 2 of the constitution of the Commonwealth of the Philippines.

The term "item" as used in section 19 of the Act of Congress of August 29, 1916 (Jones Law) has a well defined meaning. Examining carefully the various decisions of State and Federal courts in the United States, it will be found that the term "item" has been invariably held to mean "the particulars, the details, the distinct and severable parts of the appropriation." In Commonwealth vs. Barnett, 199 Pa. 161, 48. Alt. 976, 55 L.R.A. 882, the term "item", as used in Article 4, S 16, Constitution of Pennsylvania, a similar provision, was held to mean "the particulars, the details, the distinct and severable parts of the appropriations." The same meaning was given in Callaghan vs. Boyce, (1915) 17 Ariz. 433, 153 Pac. 773. The above definition of the word "item" is generally, without any dissent, the interpretation given by the federal and state courts in the United States. And in Mennefee v. Askew, 25 Okl. 623, 107 Pac. 159, 27 L.R.A. (N.S.) 537, the word "appropriation" has been defined as "an authority from the Legislature, given at the proper time and in legal form to the proper officers, to apply a distinctly specified sum out of a designated fund in the treasury in a given

year to a specified object or demand against the state. No particular expression or set form of words is requisite or necessary to the accomplishment of the purpose."

The above meanings given to the words "item" and "appropriation" by the federal and state courts in the United States certainly exclude said sec. 7 of Act 4051 from being "an item of an appropriation bill." Said section undoubtedly is not and can never be "the particulars, the details, the distinct and severable parts of the appropriation." It is and may be a particular, the detail, the distinct and separable part of the Gratuity bill, but it is not "the particulars, the details, the distinct and severable parts of the appropriation." This is so because said sec. 7 of Act 4051, by itself, does not, in any way, make any appropriation of money.

In the case of Black & White Taxicab Co. v. Standard Oil Co. (1925) 25 Ariz. 381, 218 Pac. 139, a leading case as to the interpretation of the proviso "item or items of appropriations," the Court held that a provision in an appropriation bill imposing a tax and providing for the apportionment of the same is not "an item of an appropriation". In said leading case, the Court held that a provision of an appropriation bill to constitute an "item of an appropriation" must in itself be a distinct appropriation of money, distinct and separable.

In Com. ex rel, Elkin v. Barnett, (1901) 199 Pa., 161, 55 L.R.A. 882, 48 Atl. 976, the Court also interpreted the "item of appropriation" to mean a provision making an appropriation of money which is a distinct and separate appropriation. Thus in that case the Court upheld the veto by the Governor in an ap-

propriation bill of the amount of $2,100.00 per annum provided for one rate clerk.

In People v. Brady, 277 Ill. 120, 115 N.E., 204, State v. Jones, 99 S.c. 8, 82, S.E. 882, and Fulmore v. Lane, 104 Tex. 499, 140, S.E. 405-421, 1082, the Court took the view and held to the same doctrine that a proviso to be "an item of appropriation" must in itself be a distinct and separable appropriation.

And specifically in Fulmore v. Lane, 104 Tex. 499, 140 S.E., 405-421, 1082, and in Callaghan v. Boyce, (1915) 17 Ariz. 433, 153 Pac. 773, the Court held that a proviso to be "an item of an appropriation" must be in itself a distinct and separate appropriation. In the above two cases cited, the Court defined the word "item" to mean "the particulars, the details, the distinct and separable parts of the appropriations". It should be noted and to this we invite the attention of the Court that the word "item" has not been interpreted to mean "the particulars, the details, the distinct and separable parts of the bill," but "the particulars, the details, the distinct and separable parts of the appropriations." Hence, if the proviso is not itself a distinct and separate appropriation, it is not an item within the meaning of the constitution.

We have examined carefully the cases decided by various federal and state courts in the United States as to this point and we have yet to find a case which holds that a proviso in an appropriation bill which does not make a distinct and separate appropriation is "an item of appropriation" within the meaning of the constitutional provision in question.

PURPOSE AND PHILOSOPHY OF CONSTITUTIONAL PROVISION

The special veto power of the executive granted by the constitution to veto an item or items of an appropriation bill was designed with a view to guarding against the evils of omnibus appropriation bills, securing unrighteous support from diverse interests, and to enable the chief executive to approve and make law some appropriations, and to put others to the test of receiving a two thirds vote of the legislature as the condition of becoming law. (State v. Holder, 76 Miss. 158, 23 SO 643).

The constitutional provision, in regard to the special veto power of the Governor-General, therefore, is clear and plain in its purpose. The power given under it to the executive to veto in part a bill is definitely and clearly confined, limited and restricted to appropriation bills only. This is very plainly seen in the constitutional grant itself. Under the principle EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS the framers of the constitutional provision in question have clearly revealed the intent, the purpose and the philosophy of this constitutional grant of power to the executive in regard to the special veto power. Hence, this special veto power is clearly, definitely and strictly confined to matters of appropriation. But the Honorable Supreme Court of the Philippine Commonwealth would interpret the word "item" to mean any part of a bill which is not itself a distinct appropriation. It is respectfully submitted such interpretation is a rank heresy against the purpose, the intent and the philosophy of the constitutional provision in question. It is illogical, it is inconsistent. Such interpretation would make a mockery of the constitutional provision in

question. It would put to naught the very intent, the purpose, the philosophy behind the constitutional grant of special veto power. **It would mean the giving to the executive a power which is plainly excluded in the very constitutional grant.** It would mean, in effect, giving to the executive the power to veto non-appropriation matters, which is plainly denied him under the very constitutional provision in question.

But we invite further the attention of this Court to another point. We submit that sec. 7 of Act 4051 is not "an item of appropriation" but merely a condition or proviso of an appropriation.

Sec. 10 of Act 4051 provides: "The necessary sum to carry out the purposes of this act is hereby appropriated out of any funds in the Insular Treasury not otherwise appropriated," and Sec. 7 of Act 4051 provides: "The justices of the peace who must relinquish office during the year nineteen hundred and thirty-three in accordance with the provisions of Act Numbered Thirty -eight hundred and ninety-nine, shall also be entitled to the gratuities provided for in this Act." As was held in Black &White Taxicab Co. v. Standard Oil Co. (1923) 25 Ariz. 381, 218 Pac. 139 and in Fairfield v. Foster (1923) 25 Ariz. 146, 214 Pac. 319 "The executive cannot veto a condition or proviso of an appropriation while allowing the appropriation to stand. That would be affirmative legislation, without even the concurrence of the legislature."

In conclusion, we can do no better than quote herewith what was said in that important and leading case of State v. Holder, 76 Miss. 158, 23, SO. 643:

"And after all, and despite the pragmatic utterances of political doctrinaires, the executive, in every republican form of government, has only a qualified and destructive legislative function, and never creative legislative power. If the governor may select, dissent and dissever, where is the limit of his right? Must it be a sentence, or a clause, or a word? Must it be a section, or any part of a section, that may meet with executive disapprobation? May the governor transform a condition or a contingent appropriation into an absolute one, in disregard and defiance of the legislative will? That would be the enactment of law by executive authority without the concurrence of the legislative will, and in the face of it."

". . . To allow a single bill, entire, inseparable, relating to one thing, containing several provisions, all complementary of each other, and constituting one whole, to be picked to pieces, and some of the pieces approved, and others vetoed, is to divide the indivisible; to make one of several; to distort and pervert legislative action, and, by veto, make a two-thirds vote necessary to preserve what a majority passed allowable as to the entire bill, but inapplicable to a unit composed of diverse complementary parts, the whole passed because of each. The bill in question is an entire thing, inseparable in its provisions and to be approved or disapproved as such, and, not having been signed as a whole, was not made law by the partial and qualified approval which it received."

ERROR III

THE HONORABLE SUPREME COURT OF THE COMMONWEALTH OF THE PHILIPPINES ERRED IN HOLDING AND DECLARING THAT THE VETO BY THE GOVERNOR-GENERAL OF SECTION 7 OF ACT NO. 4051 OF THE PHILIPPINE LEGISLATURE IS VA-

LID AND CONSTITUTIONAL UNDER THE PROVISIONS OF SECTION 19 OF THE ACT OF CONGRESS OF AUGUST 29, 1916 (JONES LAW) AND OF ARTICLE VI, SECTION 2, OF THE CONSTITUTION OF THE COMMONWEALTH OF THE PHILIPPINES AND IN DENYING TO PETITIONER HEREIN THE REMEDY PRAYED FOR.

It is respectfully submitted that the Honorable Supreme Court of the Commonwealth of the Philippines erred in holding and declaring that the veto by the Governor-General of sec. 7 of Act 4051 of the Philippine Legislature is valid and constitutional. In the previous pages, we believe we have discussed exhaustively the fact that said Act 4051 is not "an appropriation bill" and neither is section 7 thereof "an item of an appropriation bill" within the meaning of section 19 of the Act of Congress of August 29, 1916 (Jones Law). Therefore, it is respectfully submitted the veto by the Governor-General of said section 7 of Act 4051 of the Philippine Legislature is unconstitutional, invalid and of no effect. As a logical consequence, said section 7 of Act 4051 of the Philippine Legislature is in full force and effect as law and by virtue thereof the present petitioner is entitled to the payment of his gratuity as provided in said law of the Philippine Legislature.

DISASTROUS CONSEQUENCES OF THE DECISION OF THE PHILIPPINE SUPREME COURT

The interpretation given by the Honorable Supreme Court of the Commonwealth of the Philippines to the constitutional provision in question is fraught with the gravest consequences to the government of

the Commonwealth and the future Philippine Republic. It is respectfully submitted that said interpretation has opened wide the doors to connivance between an unscrupulous chief executive and a supine legislature to defeat the form of government established by the constitution of a strict separation of powers between the three departments of the government. It is more than that. Henceforth, the chief executive will be omnipotent, because he will have practically the same legislative power as the very Legislature, and we shall have a condition of things never contemplated and appalling in its possible consequences. For it is not beyond possiblity that, in order to give the President a chance to use his veto according to the constitution, a section that appropriates money, however insignificant and valueless it may be, should be inserted in any kind of bill passed by the Legislature, and thus the President would have the right to veto any section in said bill under the special power to veto "an item or items of an appropriation bill". It will certainly be a dangerous delegation of legislative power pure and simple, if not an abandonment of the legislative power to the chief executive. And in such a situation, supposing that the framers of the constitution intended the proviso in question to be interpreted that way, there is no necessity for any limitation of the veto power of the chief executive. There would be no necessity for the existence of the proviso as to the veto power of the Executive. It is because we cannot conceive of any bill which cannot be turned into "an appropriation bill" by the simple expedient of inserting therein a section or part, however insignificant, that appropriates money.

PRAYER

PREMISES CONSIDERED, the petitioner respectfully prays that the petition for a writ of certiorari be granted and that the decision and judgment of the Supreme Court of the Commonwealth of the Philippines be reversed and another entered, issuing a writ of Mandamus directed to the respondents and each of them, commanding them to approve, authorize, and order the payment to the petitioner of the gratuity granted to him by Act No. 4051 of the Philippine Legislature to which he is lawfully entitled.

Pedro Y. Ylagan
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510 Maria Clara, Manila,
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Manila, Philippine Islands
June 10th, 1936.

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Supreme Court of the United States

October Term, 1936

No. 214

JUAN BENGZON,
Petitioner,

v.

THE SECRETARY OF JUSTICE AND THE INSULAR AUDITOR OF THE PHILIPPINE ISLANDS,
Respondents.

BRIEF FOR RESPONDENTS

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PRESS OF W. F. ROBERTS COMPANY, WASHINGTON, D. C.

INDEX

	PAGE
Introduction	1
Opinions Below	1
Jurisdiction	2
Question Presented	2
Statutes Involved	3
Statement of the Case	3
Argument	4
1. Act 4051, Laws of the Philippines, was an appropriation bill	5
2. Section 7 of said act was an item of an appropriation bill	6
Conclusion	7
Appendix	9

STATUTES

(In Appendix)

Philippine Autonomy Act (August 29, 1916; 39 Stat. 551)	9
Act 4051, Laws of the Philippines	9

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THE SECRETARY OF JUSTICE AND THE INSULAR AUDITOR OF THE PHILIPPINE ISLANDS,
Respondents.

BRIEF FOR RESPONDENTS

Introduction

The petitioner seeks a writ of mandamus addressed to the respondents and directing them to order the payment to him of a gratuity under the provisions of Act No. 4051, Laws of the Philippines.

Opinions Below

The opinions of the lower courts have not been officially reported. The opinion of the Court of First Instance of Manila is to be found on pages 29 to 35 of the Record herein. The majority opinion of the Supreme Court of the Philippines appears on pages 36 to 43 of the Record and the minority opinion on pages 43 to 50 thereof.

Jurisdiction

The jurisdiction of this Court to review this case rests on sections 7 and 8 (a) of the act of February 13, 1925 (43 Stat. 940) and on section 7 of the act of March 24, 1934 (48 Stat. 462).

The final judgment of the Supreme Court of the Philippines was entered on February 7, 1936 (R-59). The petition for a writ of certiorari was filed on July 20, 1936, within the six months period prescribed by law. The case involves the interpretation of section 19 of the act of August 29, 1916 (the so-called Jones Law or Philippine Autonomy Act, 39 Stat. 545).

No notice of the filing of the petition for the writ was served upon the respondents within ten days after such filing as required by paragraph 3 of Rule 35 of this Court. The attorney for the respondents was informed by the clerk by telephone on September 10, 1936, that the petition and transcript of record had been filed on July 20, 1936, and that the case had been docketed. It is not believed that this failure on the part of the petitioner to comply with the rule affects the jurisdiction of this Court. Accordingly, the respondents make no point of it except to explain the apparent delay in the submission of this brief.

The Questions Presented

The only question presented by the record seems to be:

> Is section 7 of Act No. 4051, Laws of the Philippines, an "item of an appropriation bill" within the meaning of section 19 of the Philippine Autonomy Act?

This is substantially the question suggested under "The Issues of Law" on page 7 of the petition.

The Statutes Involved

The statutes involved in this case appear in the Appendix, pages 9 to 15.

STATEMENT OF THE CASE

For over twenty years prior to January 14, 1933, the petitioner was a justice of the peace at Lingayen, Pangasinan, Philippine Islands. On that date he attained the age of sixty-five years and automatically ceased to hold office in accordance with Act No. 3899, Laws of the Philippines.

In February, 1933, the Philippine Legislature passed Act No. 4051. This act provided for the payment of gratuities to insular officials and employees forced from the public service by reason of reorganization of the government and appropriated the necessary money for such payment. Section 7 of the act extended the benefits of the act to persons situated like the petitioner, *i.e.*, to justices of the peace separated from their offices in 1933 by reason of age. The Governor General approved the act on February 21, 1933, except section 7, which he expressly disapproved (R-32).

The petitioner believed that the Governor General's veto of section 7 was ineffective and that section 7 had become law in spite of the purported veto. Accordingly, he applied for the gratuity provided by the act. Payment of the gratuity was refused. The

petitioner thereupon applied to the Court of First Instance of Manila for a writ of mandamus addressed to the respondents and directing them to order the payment to him of the gratuity in question (R-1-3).

The Court of First Instance dismissed the petitioner's action on the ground that since the Governor General was not a party to the proceedings, the Court could not inquire into the alleged invalidity of his veto of section 7 (R-45). Upon appeal to the Supreme Court of the Philippines, that tribunal affirmed the judgment of the lower court (R-43), basing its decision on a finding that Act No. 4051 was an appropriation bill, that section 7 was an item in an appropriation bill (R-39) and that hence the veto of section 7 by the Governor General was a valid exercise of the power conferred upon him by the pertinent part of section 19 of the Philippine Organic Act (August 29, 1916; 39 Stat. 551), which provides:

> "The Governor General shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he does not object."

ARGUMENT

The respondents contend:

(1) That Act 4051, Laws of the Philippines, was an appropriation bill within the meaning of section 19 of the Philippine Autonomy Act.

(2) That Section 7 of Act 4051 was an item of an appropriation bill within the meaning of section 19 of the Philippine Autonomy Act.

Point I

Act 4051 was an Appropriation Bill

The bill in question sought to appropriate funds from the Philippine Treasury (section 10) to be paid to two classes of persons (sections 1 and 7). It is true that the bill was not in the usual form of an appropriation measure, with definite amounts set opposite stated objects of expenditure, but there is no requirement of law nor of binding custom that it should be in order to merit the title of "appropriation bill" within the meaning of the Philippine Organic Act. The important fact is that the act does directly call for an expenditure of public funds in two perfectly definite directions and hence is an "appropriation act," in the sense that it appropriates money. If the absence of the ordinary form in which appropriation measures are drawn up is to prevent a bill of this character from being classified as an "appropriation bill" subject to partial veto by the Governor General, then it is clearly evident that the insular legislature can, by an appropriate framing of any measure designed to take money from the Treasury, strip the Governor General of his authority under the Philippine Autonomy Act to veto objectionable items of expenditure. In order to prevent a frustration of the will of the Congress that the Governor General should have the power to confine the use of the public funds to proper objects, it is necessary to disregard the form of any given enactment and to look to the terms thereof to see (a) if money is appropriated and (b) if there are such clearly defined items of expenditure that one or more

may be vetoed without effect on the remainder. An examination of Act 4051 on this basis discloses (a) an appropriation in section 10 and (b), two entirely separate items of expenditure (sections 1 and 7). Based on this test, the act in question is an "appropriation bill."

While it is not binding on this Court, the view of the Philippine Legislature as to the character of Act 4051 is at least informative as to what that body believed it was enacting. Section 12 of the act anticipates a possible partial veto by the Governor General by referring to it in terms. Since the only kind of an enactment subject to such partial veto is an "appropriation bill" it is a fair assumption that the legislature regarded Act 4051 as an "appropriation bill" with separate items of expenditure or it would not have made mention of a possible partial veto. As no definition has ever been assigned by the courts or by the Congress to the words "items" or "appropriation bill" as used in the Philippine Autonomy Act and as the interpretation of these words by the Philippine Legislature is not only clearly not wrong but manifestly designed to give full effect to the will of the Congress, it is unlikely that this Court will care to disturb it.

Point II

Section 7 is an Item of Appropriation

Section 7 of Act 4051 designates a defined class of persons to whom gratuities are to be paid out of the money provided in section 10 of the act. It is true that section 7 contains no dollars and cents appropriation in itself, but again disregarding mere form,

it is perfectly apparent that section 7 calls for a payment of money from the treasury and that section 7 is separate from all other parts of the act. In other words, section 7 sets up a described object of expenditure (a certain group of persons) on which, by section 10, money is appropriated to be spent. It is hardly likely that by separating the *object* of the expenditure by a few lines in the act from the *sum* to be spent on such object, the legislature can deprive the Governor General of his power and authority to pass on the wisdom of the particular expenditure and thus force him either to approve the spending of money for this particular objectionable object or veto *in toto* an otherwise acceptable bill. If the legislature could achieve such a result by such methods the authority of the Governor General in the premises, conferred on him by the Philippine Autonomy Act, could be completely nullified.

Section 12 of the act, mentioned under Point I, indicates that the Philippine Legislature had no doubt that there were at least two items of appropriation in the act. For reasons already given, this court will probably be reluctant to oppose the view of the nature of sections 1 and 7 adopted by the insular legislature, namely, that they are items in an appropriation bill and hence subject to separate veto by the Governor General.

CONCLUSION

As the interpretation of Section 19 of the Philippine Autonomy Act adopted by the Philippine Legislature, the Governor General, and the Supreme Court of the Philippines is reasonable, is clearly

permissible under the words of the statute, and preserves to the Governor General the full powers granted him by the Congress, it is submitted that it should not be departed from but ought to be confirmed, in effect, by denial of the petition.

Respectfully submitted,

MARK E. GUERIN,
Counsel for Respondents.

APPENDIX

Statutes Involved

Philippine Autonomy Act (August 29, 1916; 39 Stat. 551):

> "SECTION 19. . . . The Governor General shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he shall not object. The item or items objected to shall not take effect except in the manner heretofore provided in this section as to bills and joint resolutions returned to the legislature without his approval."

ACT 4051, LAWS OF THE PHILIPPINES

AN ACT TO PROVIDE FOR THE PAYMENT OF RETIREMENT GRATUITIES TO OFFICERS AND EMPLOYEES OF THE INSULAR GOVERNMENT RETIRED FROM THE SERVICE AS A RESULT OF THE REORGANIZATION OR REDUCTION OF PERSONNEL THEREOF, INCLUDING THE JUSTICES OF THE PEACE WHO MUST RELINQUISH OFFICE IN ACCORDANCE WITH THE PROVISIONS OF ACT NUMBERED THIRTY-EIGHT HUNDRED AND NINETY-NINE, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Legislature assembled and by the authority of the same:

SECTION 1. Whenever it is necessary, in carrying out of the provisions of Act Numbered Four thousand and seven or any other provisions of law, department order, or regulation adopted for the purpose of consolidating activities or reducing the personnel and expenses of the Government, to abolish a position or retire an officer or employee in any bureau or office of the Insular Government on or before December thirty-first, nineteen hundred and thirty-three, the officer or employee to be separated or retired from the service shall be entitled to a gratuity as follows:

(a) Regularly appointed officers and employees shall be entitled to gratuity at the rate of one month's salary or its equivalent in the case of those paid by the day or by the week for each year of service and the proportionate amount of any fraction thereof, but not to exceed twenty-four months in the case of those whose compensation exceeds twelve hundred pesos a year: PROVIDED, That in the case of those who receive twelve hundred pesos a year or less the total retirement gratuity to which they may be entitled shall not exceed twenty-four hundred pesos.

(b) Temporary officers and employees who have served the Government for at least five years before the approval of this Act, shall be entitled to gratuity at the rate of one month's salary or its equivalent in the case of those paid by the hour, by the day or by the week for each year of service and the proportionate amount of any fraction thereof, but not to exceed twenty-four months in the case of those whose compensation exceeds twelve hundred pesos a year, PROVIDED, That in the case of

those who receive twelve hundred pesos a year or less the total retirement gratuity to which they may be entitled shall not exceed twenty-four hundred pesos.

(c) Temporary officers and employees who have served the Government less than five years before the approval of this Act, shall be entitled to a gratuity at the rate of half a month's salary or its equivalent in the case of those paid by the hour, by the day or by the week for each year of service and the proportionate amount of any fraction thereof.

Persons serving on a part time basis shall not be entitled to the gratuities authorized in this Act.

SECTION 2. In separating or retiring employees under the provisions of this Act, Department Heads shall give preference to officers or employees who, on account of their advanced age or of any physical or mental defect, are not fit to render further efficient service in the positions they occupy: PROVIDED, HOWEVER, That the appointees of the Governor-General may be retired by the Department Head concerned with the approval of the Governor-General.

SECTION 3. The gratuity provided in section one hereof shall be based on the highest basic rate of salary received and shall be paid monthly at the rate of thirty-three and one-third per centum of the monthly salary of the officer or employee, with the exception of those who will be entitled to a gratuity of one month's salary or less who shall totally be paid immediately upon separation: PROVIDED, HOWEVER, That with the approval of the Head of

the Department in which such officer or employee was serving upon separation or retirement, the said officer or employee may, subject to such rules and regulations as may be approved by the Secretary of Finance, sell, transfer or cede his right to the gratuity payments, to any investment fund under the control of the Insular Government, or to any bank duly authorized to transact business in the Philippine Islands: PROVIDED, FURTHER, That the gratuity provided for in this Act shall not be attached or levied upon execution.

SECTION 4. If an officer or employee separated or retired under the provisions of this Act is entitled to the benefits of Act Numbered Twenty-five hundred and eighy-nine, as amended, or to the benefits of any law or special pension fund created by authority of the Philippine Legislature, such as the Teacher's Retirement and Disability Fund by virtue of Act Numbered Three Thousand and fifty, as amended, the Pension and Retirement Fund of the Philippine Health Service under Act Numbered Thirty-one hundred and seventy-three, and the Pension and Retirement Fund of the Philippine Constabulary under Act Numbered Sixteen hundred and thirty-eight, he shall have the privilege to choose between the benefits prescribed in said Acts and those herein provided for; but in no case shall the payment of gratuity under more than one Act be authorized. If he chooses the benefits granted by the special pension or retirement Act, he shall be retired under the provisions of said Act if he is entitled to its benefits; in case he prefers the gratuity provided for in this Act, he shall be granted such gratuity, and the

amounts deducted from his salary as contributions to the Teacher Retirement and Disability Fund, the Pension and Retirement Fund of the Philippine Health Service, or the Pension and Retirement Fund of the Philippine Constabulary, as the case may be, shall be refunded to him, and in the case of the Teacher's Retirement and Disability Fund, said fund shall also return to the general funds of the Insular Government the corresponding direct contributions made to said special fund by the Insular Government: PROVIDED, HOWEVER, That Judges and Auxiliary Judges of First Instances and Public Service Commissioners who may be retired under the provisions of this Act, shall be entitled to the benefits provided for in Act Numbered Twenty-five hundred and eighty-nine, as amended, the provisions of this Act or any other Act to the contrary notwithstanding.

SECTION 5. In case of the death of an officer or employee after separation or retirement from the service under the provisions of this Act, any gratuity or part thereof due to him shall be paid to his legitimate heir or heirs, or, if discounted under the provisions of section three hereof, then to the investment fund of the Insular Government or to the bank to which the right to such gratuity may have been ceded.

SECTION 6. A person separated or retired under the provisions of this Act may be reappointed to any position in the Insular Government but by accepting such reappointment he shall forever waive all future gratuity payments and or claims under the provisions of this Act. Similarly, a retired person who, under the revisions of section three hereof, has discounted the gratuity payments to which he is entitled shall,

upon his reappointment to any position in the Insular Government, first refund to the investment fund or the bank to which he has ceded his right to the gratuity the total discounted value of all the gratuity payments which he would not yet have received had these been made to him in monthly instalments.

SECTION 7. The Justices of the Peace who must relinquish office during the year nineteen hundred and thirty-three in accordance with the provisions of Act Numbered Thirty-eight hundred and ninety-nine, shall also be entitled to the gratuities provided for in this Act.

SECTION 8. The offices or positions vacated by the separation or retirement of officers and employees with gratuities paid under the provisions of section one of this Act shall not be filled and shall be considered abolished ipso facto, except those specifically created by law, and those of chief clerk, chief of division, and lighthouse keeper.

SECTION 9. Nothing herein provided shall be construed as entitling to the benefits of this Act those officers and employees of the Insular Government who voluntarily resign from the service due to the reduction of their compensation or to transfer from one office to another by virtue of the provisions of any Act, or to the abolition of double compensations to which they were formerly entitled, or to any cause not provided herein.

SECTION 10. The necessary sum to carry out the purposes of this Act is hereby appropriated out of any funds in the Insular Treasury not otherwise appropriated.

SECTION 11. This Act shall take effect as of January first, nineteen hundred and thirty-three: PROVIDED, That the provisions hereof shall be applicable to such officers and employees of the Insular Government as were separated from the service during the year nineteen hundred and thirty-two as a result of the operation of Executive Order No. 369 of the Governor-General and of his Memorandum Order issued on April eight, nineteen hundred and thirty-two.

SECTION 12. If for any reason, any section or provision of this Act is disapproved by the Governor-General or is challenged in a competent court and is held to be unconstitutional or invalid, none of the other sections or provisions hereof shall be affected thereby and such other section and provisions shall continue to govern as if the sections or provision so disapproved or held invalid had never been incorporated in this Act.

Approved, section 7 excepted, February 21, 1933.

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Supreme Court of the United States

OCTOBER TERM, 1936

NUMBER 214

JUAN BENGZON,
Petitioner,

v.

THE SECRETARY OF JUSTICE AND THE INSULAR AUDITOR OF THE PHILIPPINE ISLANDS,
Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF THE PHILIPPINES

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PRESS OF W. F. ROBERTS COMPANY, WASHINGTON, D. C.

INDEX

	PAGE
Introduction	1
Opinions Below	1
Question Presented	2
Statutes Involved	2
Statement of the Case	2
Summary of the Argument	4
Argument	4
Conclusion	25
Appendix	26

APPENDIX

Statutes

Philippine Autonomy Act (August 29, 1916; 39 Stat. 551)	26
Act 4051, Laws of the Philippines	26
Excerpts from Philippine Appropriation Acts.	
Act 3145	33
Act 3213	33
Act 3217	35
Act 3227	36
Act 3340	36
Act 3355	36
Act 3670	37
Act 3912	37

TABLE OF CASES

Federal

	PAGE
Alaska S. S. Co. v. *United States,* 290 U. S. 256	8
Brewster v. *Gage,* 280 U. S. 327	8
Hastings and D. R. Co. v. *Whitney,* 132 U. S. 357	8
Smythe v. *Fiske,* 23 Wall. (U. S.) 374	8
United States v. *Hammers,* 221 U. S. 220	8
United States v. *Moore,* 95 U. S. 760	8
United States v. *Vowell,* 5 Cranch (U. S.) 368	8

State

Black and White Taxicab Co. v. *Standard Oil Co.,* 25 Ariz. 381, 218 Pac. 139	12
Callaghan v. *Boyce,* 17 Ariz. 433, 153 Pac. 773	13
Commonwealth v. *Barnett,* 199 Pa. 161, 48 Atl. 976	18, 20
Fairfield v. *Porter,* 25 Ariz. 146, 214 Pac. 319	18
Fulmore v. *Lane,* 104 Tex. 499, 140 S. W. 405	21
Mennefee v. *Askew,* 25 Okla. 623, 107 Pac. 159	22
People v. *Brady,* 277 Ill. 111, 115 N. E. 204	22
State v. *Holder,* 76 Miss. 158, 23 So. 643	23
University v. *Trapp,* 28 Okla. 83, 113 Pac. 910	24

Supreme Court of the United States

OCTOBER TERM, 1936

NUMBER 214

JUAN BENGZON,
Petitioner,

v.

THE SECRETARY OF JUSTICE AND THE INSULAR AUDITOR OF THE PHILIPPINE ISLANDS,
Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF THE PHILIPPINES

BRIEF FOR RESPONDENTS

Introduction

The petitioner seeks a reversal of a decision of the Supreme Court of the Commonwealth of the Philippines denying his claim to a gratuity under the provisions of Act 4051, Laws of the Philippines.

Opinions Below

The opinions of the lower courts have not yet been officially reported. The opinion of the Court of First

Instance of Manila is to be found on pages 29 to 35 of the Record herein. The majority opinion of the Supreme Court of the Philippines appears on pages 36 to 43 of the Record and the minority opinion on pages 43 to 50 thereof.

The Question Presented

The decision of this case hinges on the answer to one question:

Was section 7 of Act 4051, Laws of the Philippines, a "particular item * * * of an appropriation bill" within the meaning of section 19 of the Philippine Autonomy Act and hence subject to the power of the Governor General to veto particular items in appropriation bills?

This is substantially the question suggested under "The Issues of Law" on page 7 of the petition.

The Statutes Involved

The statutes involved in this case appear in the appendix, pages 26 to 32.

Statement of the Case

On January 14, 1933, the petitioner, a justice of the peace in the Philippine Islands, attained the age of sixty-five years. He thereupon and on account of his age automatically ceased to hold office in accordance with Act 3899, Laws of the Philippines.

In February, 1933, the Philippine Legislature enacted a measure which became Act 4051, Laws of the Philippines. This act provided for the payment of gratuities to two classes of persons (defined in sections 1 and 7) and appropriated the necessary funds

for such payments (section 10). Under section 1, persons forced from the public service on or before December 31, 1933, by reorganization of the government, were made eligible to receive the gratuities prescribed by the act. Under section 7, provision was made for the payment of gratuities to justices of the peace, who, like the petitioner, were separated from their offices during 1933 by reason of age. On February 21, 1933, the Governor General approved the act with the exception of section 7, which he expressly disapproved (R-32).

The petitioner believed that the Governor General's veto of section 7 was ineffective and that section 7 had become law in spite of the purported veto. Accordingly, he applied for the gratuity provided by the act. Payment of the gratuity was refused. The petitioner thereupon applied to the Court of First Instance of Manila for a writ of mandamus addressed to the respondents and directing them to order the payment to him of the gratuity in question (R-1-3).

The Court of First Instance dismissed the petitioner's action on the ground that since the Governor General was not a party to the proceedings, the Court could not inquire into the alleged invalidity of his veto of section 7 (R-45). Upon appeal to the Supreme Court of the Philippines, that tribunal affirmed the judgment of the lower court (R-43), basing its decision on a finding that Act No. 4051 was an appropriation bill, that section 7 was an item in an appropriation bill (R-39) and that hence the veto of section 7 by the Governor General was a valid exercise of the power conferred upon him by the perti-

nent part of section 19 of the Philippine Organic Act (August 29, 1916; 39 Stat. 551), which provides:

> "The Governor General shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he does not object."

Summary of the Argument

The respondents contend:

That section 7, Act 4051, Laws of the Philippines, was a "particular item * * * in an appropriation bill" within the contemplation of section 19 of the Philippine Autonomy Act. From this it follows that the Governor General's veto of section 7 was effective to prevent its becoming law and that the petitioner is therefore not entitled to the gratuity claimed by him.

ARGUMENT

As the expressions "appropriation bill" and "particular item or items" (in an appropriation bill) appear never to have been the subject of definition by the Federal courts or by the Congress, it is a logical assumption that the expressions are not technical but are to be given the ordinary meaning of the words used. On this basis and referring to Webster's "New International Dictionary of the English Language" (Merriam, 1918), it is found that an appropriation is "money set apart by formal action to a particular use" and an item is "a detail; as the items in a bill". Applying these definitions, a legislative act (whatever its stated purpose and detailed provisions may be) which sets aside money for a specific use may fairly be called an appropriation act because one re-

sult of the measure is to make an appropriation. If, in addition to making an appropriation, the bill directs that the money be expended in certain amounts for a number of stated purposes, then such directions may logically be said to form individual details or items of the bill.

Act 4051, Laws of the Philippines, seems to fall squarely within the tests just suggested. Section 10 of the act makes an appropriation from the Insular treasury of the funds necessary to pay the gratuities prescribed by the act to the classes of persons defined in sections 1 and 7. The amount of money to be paid to certain justices of the peace under section 7 can be calculated by reference to the number of such justices and their length of service. That is, there can be ascertained and taken from the act a perfectly definite provision, both as to purpose and amount, for payments to justices of the peace. This being so, it is not straining at language to say that the provision for payments to these justices is a detail or separable part of the legislation and hence a particular item of the measure, which is itself an appropriation act because it appropriates money. Accordingly, the Governor General was empowered under the Philippine Autonomy Act to veto section 7 without affecting the remainder of the bill and his veto was effective to deny to the petitioner any basis for the claim to a gratuity now asserted by him.

In addition to a consideration of the matter at issue on the basis of general principles, a detailed examination was made of the legislative history of the bill which became the Philippine Autonomy Act in an effort to find some more or less authoritative ex-

planation of what power the Congress intended to confer on the Governor General by section 19 and whether the Congress was employing the language used in any unusual or technical sense. However, neither in the hearings on the bill, in the reports on the bill, or in the debates in the two Houses, is any light thrown on section 19. Looking at the Philippine Autonomy Act as a whole, it is seen that a great many restrictions were placed upon the authority of the Philippine Government thereby established and that final decision on all legislation enacted by the new insular legislature was vested in the Governor General and the President (section 19). In other words, the popularly elected local legislature was powerless to act in the face of opposition from the President and the Governor General. It is worth noting that the latter was a Federal and not an Insular official. Since the Congress apparently thus intended to keep the conduct of government in the Islands effectively under the control of officers of the United States and not of the Philippines, it follows that if any question arises, based on possible ambiguity or vagueness in the language of the statute, as to the respective powers of the Insular legislature and the Governor General in the field of legislation then, in order to preserve the control of affairs in the Governor General, it is necessary to adopt a construction, if fairly permissible, which will favor the position of the Governor General.

In the case at bar, the position of the petitioner is that Act 4051 is not an appropriation act because it is entitled "An Act to provide for the payment of retirement gratuities * * *" and does in fact provide for

the payment of gratuities. He admits that the act does appropriate money but avoids the logical conclusion that the act is both a gratuity and an appropriation act by saying (Petition, page 19) that the appropriation feature is merely a collateral incident necessary to carry out the gratuity provisions. He says further (Petition, page 24) that section 7 is not an item of an appropriation bill because it does not, by itself, make any appropriation of money. All of this overlooks the fact that section 10 does appropriate money and that section 7 designates the persons to whom the money is to be paid and that the veto of section 7 operates to remove from the act a perfectly distinct and separable object of expenditure, namely, certain justices of the peace, without in any way disturbing the other provisions of the act.

The petitioner's contentions cannot be sound for the reason that if they are upheld it is tantamount to saying that by carefully naming a bill appropriating money from the Insular treasury anything but an appropriation bill and by placing the objects of expenditure in sections of the bill so that they are separated from the section actually appropriating the money, the Insular legislature can completely strip the Governor General of his powers granted by the Congress to veto particular items of an appropriation bill. That is, if the petitioner prevails, the remedy provided by the Congress to prevent the well known and deplorable practice of presenting to the executive omnibus bills containing highly objectionable appropriations along with meritorious appropriations will be entirely destroyed.

The action of the Governor General on section 7, Act 4051, was in keeping with the view of the author-

ity conferred by section 19 of the Philippine Autonomy Act which has been held by several governors general since the approval of the latter act on August 29, 1916. Examples of the exercise of this power are collected in the Appendix (pages 33 to 38). These examples are taken from the annual general appropriation acts for the support of the Philippine Government and indicate the all inclusive meaning assigned to the word "item" by the chief executives of the Philippines. In none of these examples (nor in hundreds of others that might be shown) was the veto overridden by the legislature nor the Governor General's action otherwise questioned. This is at least some indication that the view of his power of partial veto held by the Governor General was understood by the legislature as correct in law. The wide meaning given to "item" by the governors general and the legislature amounts to an administrative interpretation of section 19 by those charged with its execution. It is permissible under the wording of the statute and will not lightly be disturbed by this Court.

United States v. *Vowell*, 5 Cranch (U. S.) 368 (1809).

Smyth v. *Fiske*, 23 Wall. (U. S.) 374 (1874).

United States v. *Moore*, 95 U. S. 760 (1877).

Hastings and D. R. Co. v. *Whitney*, 132 U. S. 357 (1889).

United States v. *Hammers*, 221 U. S. 220 (1910).

Brewster v. *Gage*, 280 U. S. 327 (1929).

Alaska S. S. Co. v. *United States*, 290 U. S. 256 (1933).

As the Congress has never shown any intention to give the Governor General of the Philippines less power than the executive heads of the other outlying possessions but rather more, it is of interest, as tending to support the Philippine interpretation of section 19, to compare the powers of partial veto conferred on the Governors of Hawaii, Alaska, and Puerto Rico, bearing in mind the suggestion that the Congress intended that the Governor General should have similar and at least as much authority as the three governors.

Hawaii:

He (the Governor) may veto any specific item or items in any bill which appropriates money for specific purposes, but shall veto other bills, if at all, only as a whole. (April 30, 1900, sec. 49, 31 Stat. 149).

Alaska:

* * * He (the Governor) may veto any specific item or items in any bill which appropriates money for specific purposes, but shall veto other bills, if at all, only as a whole. * * * (August 24, 1912, sec. 14, 37 Stat. 516).

Puerto Rico:

* * * If any bill presented to the governor contains several items of appropriation of money, he may object to one or more of such items, or any part or parts, portion or portions thereof, while approving of the other portion of the bill. * * * (March 2, 1917, sec. 34, 39 Stat. 960).

These quotations show that the three governors have the power of partial veto over any bill appropriating money. There being absolutely nothing to show that any difference in meaning was intended between "an appropriation bill" (Philippines) "any bill which appropriates money". (Hawaii and Alaska) and "any bill * * * (which) contains * * * items of appropriation" (Puerto Rico) and the three expressions being synonymous in practical effect, it follows that the Governor General of the Philippines was intended by the Congress to have the power of partial veto over any bill appropriating money, at least in the form of items, as does Act 4051. As has already been pointed out, an "item" is simply a detail or a severable part of a bill and there is nothing in the Philippine Autonomy Act, as there is in the Puerto Rican act quoted, requiring that an item in itself appropriate money.

Based on the foregoing it is proper to assert

(a) That Act 4051 was an "appropriation bill" as the words were used by the Congress in the Philippine Autonomy Act;

(b) That section 7 of Act 4051 was an "item" in such bill because

(1) It provided for the payment of money to a defined class of persons in an amount readily calculable out of the funds provided in section 10 of the Act and because

(2) Apart from its appropriative effect, it was a separate section, part, or detail of the bill.

(c) That being such item in such bill it was subject to separate veto by the Governor General and his

veto was therefore effective to prevent section 7 from becoming law;

(d) That accordingly the petitioner has no basis in law for his claim to a gratuity from the Philippine government.

In seeking for precedents touching the questions at issue, it was found that apparently there have been no cases dealing with them in any Federal jurisdiction. A considerable number of state constitutions contain provisions for the separate veto of items in bills appropriating money but the number of cases involving such provisions is very small. Those known to the respondents, which includes all of those cited by the petitioner, are analyzed below. From the analyses it will be noted that of the cases cited by the petitioner those which are not irrelevant support the position of the respondents. While these cases are from the state courts they are persuasive as showing the way special veto provisions similar to that in the Philippine Autonomy Act have been viewed by courts in Oklahoma, Arizona, Mississippi, Illinois, Texas and Pennsylvania. While as stated before, no material of any kind has been found to show expressly what the Congress meant by the special veto power in section 19 of the Philippine Autonomy Act, it is a fair assumption that the members drafting the act were more or less familiar with similar powers in the state constitutions and intended to give the Governor General substantially the power of special veto exercised by the governors of the states and already conferred by the Congress on the governors of Hawaii and Alaska and later given to the governor of Puerto Rico. On this assumption the state cases are ex-

tremely helpful in showing the permissible extent of the power as exercised in the states.

Black and White Taxicab Co. v. *Standard Oil Co.*, 25 Ariz. 381, 218 Pac. 139 (1923).

A bill for raising money for highway purposes passed by the Arizona legislature provided, among other things, that a tax of 3 cents per gallon should be added to the sales price of the gasoline by the dealers. It was also provided that the tax should be paid to the State Treasurer, who was directed to place one-half of it in the funds of the state in the treasury and to turn one-half of it over to the counties of the state for the maintenance of county roads and highways. The governor of Arizona, in approving the bill as a whole, vetoed the gasoline tax provision and the apportionment of the funds derived therefrom under authority of section 7, Article V of the State Constitution:

> "If any bill presented to the Governor contains several * * * appropriations of money, he may object to one or more of such items while approving other portions of the bill."

In spite of the Governor's partial veto, the state taxing officials proceeded with the collection of the tax. The Taxicab Company paid 70 cents under protest and brought suit to recover the payment on the ground that the taxing and apportionment provisions had been vetoed and were not law.

The Supreme Court of Arizona was of the opinion (a) that the taxing section was not an appropriation of money and hence was not subject to separate veto

by the Governor and (b) that the constitutional provision, in referring to "appropriation of money", meant money belonging to the State and did not cover money collected by the State for the counties, as was one-half of the gasoline tax, which never was intended to and never did become part of the funds of the State but was the absolute property of the counties and hence that the provision appropriating one-half of the tax was not an appropriation of money within the meaning of the State constitution. Accordingly, the Court held the separate veto by the Governor of the taxing and apportionment sections of the bill to be void.

It will be observed that this case deals with the broad question of what was an "appropriation" under the Arizona constitution and not with the meaning of the expressions "appropriation bill" and "items in appropriation bill" as used in the Philippine Autonomy Act. Its relevancy to the questions at bar is not apparent.

Callaghan v. *Boyce,* 17 Ariz. 433, 153 Pac. 773 (1915).

Boyce brought suit against Callaghan as auditor of Arizona to compel him to issue his warrant in settlement of twenty claims lettered from "a" to "t". Settlement of claims "a", "b", "c", "f", "i", and "j" had been refused because the Auditor was uncertain as to the availability of funds to pay them on account of the Governor's separate veto of parts of the General Appropriation Bill for 1915 (c. 3, Session Laws of the First Special Session of the Second Legislature of the State of Arizona). The Court grouped claims

"a", "b", "c", "f", and "j" in a class of claims affected by the Bill because the Governor's veto extended to an entire subdivision or section of the General Appropriation Bill. Claims "i" and "j" were affected because of the Governor's veto of a part only of an entire subdivision or section of the Bill. The parts of the Bill vetoed by the Governor are set out below, with a reference to the claims affected and the ruling of the Court on the validity of the veto.

Section 1. * * *

8. To pay the salaries of the chief clerk and assistant clerk in the incorporating department of the corporation commission there is hereby appropriated the sum of four thousand five hundred sixty dollars ($4560.00); two thousand two hundred eighty dollars ($2280.00), or so much thereof as may be needed, to be paid during each of the years ending June 30, 1916, and June 30, 1917; and all statutory appropriations heretofore made for the expenses and purposes provided for in this subdivision are hereby repealed, and the state auditor is hereby directed to draw no warrant against the general or other fund for any state moneys for the purposes provided for in this subdivision otherwise than is herein directed, the appropriation herein made being in lieu of all such statutory appropriations and is not in addition thereto. (Claim "a". Vetoed in its entirety by the Governor. Veto upheld by the Court, 153 Pac. 783.)

27. To pay all other persons employed by the state tax commission there is hereby appropriated the sum of three thousand dollars ($3,000.00); fifteen hundred dollars ($1,500.00), or so much thereof as may be needed, to be paid during each of the years ending June 30, 1916,

and June 30, 1917. (Claim "b". Vetoed in its entirety by the Governor. Veto upheld by the Court, 153 Pac. 783.)

32. All moneys received from the sale of hunting licenses, permits, certificates, fines, penalties, forfeitures, or other sources, shall constitute the game protection fund, and shall be used to pay the salaries of all deputy state game wardens, for printing, the publishing of reports, postage, express, and all other necessary and office expenses of the state game warden. This appropriation shall be in lieu of all appropriations provided for in title XVIII, revised statutes of Arizona, 1913, penal code. (Claim "c". Vetoed in its entirety by the Governor. Veto upheld by the Court, 153 Pac. 783.)

93. For the maintenance of the national guard of Arizona, for the payment of insurance, expenses of instruction, examination of recruits, purchase of clothing, payment of salaries, providing allowance for camps of instructions, and other expenses, there is hereby appropriated the sum of sixty thousand dollars ($60,000.00); thirty thousand dollars ($30,000.00), or so much thereof as may be needed, to be paid during each of the years ending June 30, 1916, and June 30, 1917, said sum to be placed to the credit of the military fund out of the taxes collected for the years 1915 and 1916; said sum to be expended as provided by law; and all vouchers for expenditures made under the provisions of this section, shall be signed by the adjutant general. Upon presentation of such vouchers the state auditor is hereby authorized and directed to draw his warrants payable out of the funds credited to the account of the military fund and the state treasurer is authorized and directed to pay such warrants; provided, that the salary and

allowance for the adjutant general as provided by law shall not exceed the sum of twenty-four hundred dollars ($2400.00) per year, payable semi-monthly, and on travel allowances outside of the state shall be allowed. All statutory provisions for the salary of the adjutant general are hereby repealed.

The above appropriations are in lieu of all appropriations now provided in title XXXIII of the revised statutes of Arizona, 1913, civil code. (Claim "j". Vetoed in its entirety by the Governor. Veto upheld by the Court, 153 Pac. 783.)

Section 51. No expenditures shall be made or indebtedness incurred during the fiscal years ending June 30, 1916, and June 30, 1917, for salaries, maintenance or expense of any department of state, office, commission or board; nor for maintenance, equipment, repairs, new construction, or expense of any state institution, otherwise than is herein provided for or in excess of the amounts herein appropriated for the purposes provided for in this general appropriation bill; provided, that nothing herein shall be construed as limiting, repealing, or affecting any special appropriation made by the second legislature during its regular session.

Paragraph 2815, chapter XVIII, title 11, revised statutes of Arizona, 1913, civil code, be and the same is hereby repealed.

Paragraph 4577, chapter I, title 43, revised statutes of Arizona, 1913, civil code, be and the same is hereby repealed.

Paragraph 4833, chapter I, title 49, revised statutes of Arizona, 1913, civil code, be and the same is hereby repealed. (Claims "b" and "j". Vetoed in its entirety by the Governor. Veto upheld by the Court, 153 Pac. 783.)

Section 1. * * *

57. To pay the salary of the citizen member of the board of control there is hereby appropriated the sum of forty-eight hundred dollars ($4800.00); twenty-four hundred dollars ($2400.00) to be paid during each of the years ending June 30, 1916, and June 30, 1917. *Paragraph 4460, revised statutes of Arizona, 1913, civil code, is hereby repealed and all statutory appropriations for the salary provided for in this subdivision are hereby repealed, and the state auditor shall draw no warrant against the general or other state fund for the salary provided for in this subdivision otherwise than is herein directed, the appropriation herein made being in lieu of all such statutory appropriations and is not in addition thereto.* (Claim "f". Portions italicized were vetoed by the Governor. Veto not sustained by the Court on the ground that the Governor had no power to veto *part* of an item.)

87. To pay for elementary training in agricultural, mining, manual training, domestic science, and other vocational pursuits in such normal and high schools as are designated under the provisions of law to give such training, there is hereby appropriated the sum of seventy-three thousand dollars ($73,000.00); thirty-six thousand five hundred dollars ($36,500.00), or so much thereof as may be needed, to be expended during each of the years ending June 30, 1916, and June 30, 1917. *The appropriation herein made for such elementary training is in lieu of all statutory appropriations heretofore made for this purpose, and is not in addition thereto; and the state auditor is hereby directed to draw no warrant against the general or other state fund for the expenses of such elementary training*

provided for in this subdivision otherwise than is hereby directed. (Claim "i". Portions italicized were vetoed by the Governor. Veto not sustained by the Court on the ground that the Governor had no power to veto *part* of an item.)

The petitioner apparently cites this case in order to illustrate what an "item" is (Petition, p. 22, 23, 25). From the illustrations above quoted, it appears that "item", to employ the words of the Court,

> "* * * is used synonymously with 'subject', 'distinct or separate parts,' and an objection and disapproval by the Governor of one item or several items of appropriations of money has reference to the distinct subject or part for which the appropriation is made and all its incidents. In *Commonwealth* v. *Barnett,* 199 Pa. 161, 48 Atl. 976, 55 L.R.A. 882, the term 'item' as used in article 4, sec. 16, Constitution of Pennsylvania, a similar provision, was held to mean 'the particulars, the details, the distinct and severable parts of the appropriation,' and is 'used interchangeably in the same sense' with the word 'part.'" (163 Pac. 782.)

It will be noted, from the illustrations set out above, that the Supreme Court of Arizona gave the word "item" a very wide meaning, and did not confine it to the parts of a bill in themselves appropriating money. This has been the practice in the Philippines since the enactment of the Philippine Autonomy Act (See Appendix, pages 36 to 38).

Fairfield v. *Porter,* 25 Ariz. 146, 214 Pac. 319 (1923).

Chapter 42, Session Laws of the Fifth Legislature of Arizona, Special Session of 1922, was a general appropriation bill containing this language:

> Section 1 * * *
>
> 5. For the Corporation Commission: For salaries and wages * * * $53,880. For the following positions not to exceed the annual rates herein specified:
>
> * * * *
>
> 1 rate clerk * * * $2,100.00 per annum.
>
> * * * *

The Governor vetoed the foregoing provision for the rate clerk. Suit was instituted to force a payment from this appropriation on the ground that the Governor's veto was ineffective because the rate clerk provision was not an "item" but only part of an "item", the "item" being the whole of subdivision 5, or in other words, all the money set apart for the Corporation Commission. The Supreme Court of Arizona, in sustaining the veto of the Governor said:

> Lockwood, Superior Judge: * * * But certainly whenever the Legislature goes to the extent of saying in any bill appropriating money that a specified sum of money raised by taxation shall be spent for a specified purpose, and that alone, while other sums mentioned in the bill are to be used otherwise, no matter what language it may be disguised under, it is, nevertheless, within both the spirit and letter of the Constitution, an "item" within the bill and may be disapproved by the Governor * * *. (214 Pac. 323.)

This language supports exactly the position of the respondents in the case at bar.

Commonwealth v. *Barnett,* 199 Pa. 161, 48 Atl. 976 (1901).

Section 8 of the general appropriation act of the State of Pennsylvania approved May 13, 1899, appropriated for the public schools for the years 1899 and 1900, the sum of $11,000,000, and provided that "out of the amount received by the city of Philadelphia there shall be paid the sum of three thousand dollars to the Teachers' Institute of said city; the sum of three thousand dollars to the Philadelphia Schools of Design for Women for their corporate purposes, and the sum of ten thousand dollars to the Teachers' Annuity and Aid Association of said city * * *." In approving the bill as a whole, the Governor vetoed that part of Section 8 directing that parts of the sum appropriated for the schools should be paid to the Teachers' Institute, the School of Design, and the Aid and Annuity Association.

In an attack on the validity of the Governor's special veto suit was brought against the state treasurer to force him to pay over the money contained in the vetoed parts of the bill on the ground that they were not items within the meaning of section 16, article IV, of the Pennsylvania constitution, which grants the Governor the "power to disapprove of any item or items of any bill making appropriations of money, embracing distinct items * * *."

In upholding the Governor's veto the Court said, through Mitchell, J.:

> The argument on both sides has included much discussion of the exact definition of the word 'item'. But we have no occasion to con-

> sider minutely the language of the dictionaries in this connection. The general idea conveyed by the word is well understood and with that in our minds the precise meaning in the constitution is shown by the context to be the particulars, the details, the distinct and parts, of the appropriation * * *.

Here again both the facts and the language of the decision support the respondents' contention as to what constitutes an "item" in a bill.

Fulmore v. *Lane,* 104 Tex. 499, 140 S.W. 405 (1911).

In section 1 of the general appropriation act of the State of Texas for the biennium 1911-1913, there was appropriated the sum of $83,160 for the Attorney General's Department, half of the money to be used the first year but remaining available until exhausted, and half the second year. Appended to this appropriation was a set of rules for the guidance of the Attorney General in the spending of the funds, including maximum limitations in the number of his employees and their salaries. The Governor, exercising his constitutional power of disapproving items of appropriation in bills containing such items, vetoed that part of the appropriation setting aside $41,580 for the second year of the biennium, stating that the sum appropriated for the first year was sufficient for both years. He also vetoed the rules for the guidance of the Attorney General. In a suit to test the validity of the Governor's special veto the Supreme Court of Texas held that the appropriation for each year of the biennium was an "item" and subject to the Governor's veto but that the set of rules was an inseparable part of an item and that the Gov-

ernor had no authority to veto a part of a bill not severable and distinct from the remainder. (140 S.W. 412).

In this case the Court had no difficulty in deciding that a distinct and severable part of a bill was an "item" in itself and subject to special veto although surrounded by and included in another and larger "item". The case is of value as showing the pragmatic definition of "item" applied by the courts.

Menefee v. *Askew,* 25 Okla. 623, 107 Pac. 159 (1910).

This case does not involve the meaning of "appropriation bill" or of "item" but is concerned solely with whether certain parts of Chapter 19, Session Laws of Oklahoma, 1909, constituted such an "appropriation" of state funds within the meaning of the Oklahoma constitution as to justify payment of the compensation of the Fish and Game Warden.

People v. *Brady,* 277 Ill. 124, 115 N.E. 204 (1917),

A law of Illinois provided an appropriation as follows:

(A) To the State Board of Agriculture the sum of one hundred fifty-three thousand, one hundred and fifty dollars ($153,150) for the two years beginning July 1, 1915, and ending June 30, 1917, to be used as follows (then follows a list specifying 44 separate purposes with an amount set opposite each purpose). The Governor applied his special veto to several of these purposes and their corresponding amounts under his constitutional power to "not approve any one or more of the items or sections contained in any bill" appropriating money. It was contended, in a

suit testing the validity of the special veto, that the only item the Governor could veto was the provision of $153,150 for the general purposes of the Board as this was the distinct item within the meaning of the constitution, the 44 separate purposes and amounts being merely apportionments or directions. In upholding the veto the Court said:

> "The word 'item' is in common use and well understood as a separate entry in an account or a schedule, or a *separate particular in an enumeration of a total which is separate and distinct from the other particulars or entries* * * *." (115 N.E. 207) (emphasis supplied).

State v. *Holder*, 76 Miss. 158, 23 So. 643 (1898).

The legislature appropriated $40,980 for salaries of teachers and officers at the State Industrial Institute and College but provided that the money should not be available unless the trustees of the institution adopted by-laws covering some half dozen different matters and filed with the auditor a copy of their action showing compliance with the conditions imposed by the legislation. The Governor had constitutional authority to "veto parts of any appropriation bill" while approving the remainder. He vetoed several of the proposed by-laws. A suit was brought to test the validity of the Governor's special veto. The Supreme Court of Mississippi held that the Governor had exceeded his authority because the veto was directed not to parts of the bill different, separable, and each complete without the other as contemplated by the constitution, but to conditions attached to such a part.

The Court stated that an unauthorized qualified approval of a bill did not amount to the approval necessary to make such bill law.

It is to be observed that the idea of "part" entertained by the Court is exactly the definition of "item" contended for by the respondents in the case at bar.

University v. *Trapp*, 28 Okla. 83, 113 Pac. 910 (1911).

The legislature appropriated about $285,000 for the support of the University in section 1 of a bill. In section 2 of the bill it apportioned the money, so much to be spent on each item in a long list of specified objects and purposes. The Governor vetoed one of these "items" and reduced the amounts apportioned for sixteen of the others. His action was challenged by the University. It was held by the Supreme Court of Oklahoma that he had exceeded his authority; that the only item subject to his veto was the total appropriation in section 1; that section 2 was made up not of "items" but of directions or conditions as to the expenditure of the funds. It was further held that since the Governor had not unqualifiedly approved or disapproved the bill, which was his only authority, his action was a nullity and the bill, since it had not been properly approved, had not become law.

As to the first holding, it is unsound from the standpoint of principle and the weight of authority. It was condemned on both counts by the Supreme Court of Illinois in *People* v. *Brady, supra*, and has never been followed outside of its own jurisdiction.

CONCLUSION

From the foregoing it is believed to be evident that the Governor General was acting within his authority in vetoing Section 7, Act 4051, Laws of the Philippines; that accordingly Section 7 never became law; that as a consequence the petitioners' claim for a gratuity is without foundation; and that therefore the judgement of the Supreme Court of the Commonwealth of the Philippines should be affirmed.

Respectfully submitted,

EUGENE M. CAFFEY,
Counsel for Respondents.

ARTHUR W. BROWN,
The Judge Advocate General, U. S. Army.

LOWELL W. BASSETT,
Judge Advocate,
Of Counsel.

APPENDIX

Statutes Involved

Philippine Autonomy Act (August 29, 1916; 39 Stat. 551):

> "SECTION 19. . . . The Governor General shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he shall not object. The item or items objected to shall not take effect except in the manner heretofore provided in this section as to bills and joint resolutions returned to the legislature without his approval."

ACT 4051, LAWS OF THE PHILIPPINES

AN ACT TO PROVIDE FOR THE PAYMENT OF RETIREMENT GRATUITIES TO OFFICERS AND EMPLOYEES OF THE INSULAR GOVERNMENT RETIRED FROM THE SERVICE AS A RESULT OF THE REORGANIZATION OR REDUCTION OF PERSONNEL THEREOF, INCLUDING THE JUSTICES OF THE PEACE WHO MUST RELINQUISH OFFICE IN ACCORDANCE WITH THE PROVISIONS OF ACT NUMBERED THIRTY-EIGHT HUNDRED AND NINETY-NINE, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Legislature assembled and by the authority of the same:

SECTION 1. Whenever it is necessary, in carrying out of the provisions of Act Numbered Four thousand and seven or any other provisions of law, department order, or regulation adopted for the purpose of consolidating activities or reducing the personnel and expenses of the Government, to abolish a position or retire an officer or employee in any bureau or office of the Insular Government on or before December thirty-first, nineteen hundred and thirty-three, the officer or employee to be separated or retired from the service shall be entitled to a gratuity as follows:

(a) Regularly appointed officers and employees shall be entitled to gratuity at the rate of one month's salary or its equivalent in the case of those paid by the day or by the week for each year of service and the proportionate amount of any fraction thereof, but not to exceed twenty-four months in the case of those whose compensation exceeds twelve hundred pesos a year: PROVIDED, That in the case of those who receive twelve hundred pesos a year or less the total retirement gratuity to which they may be entitled shall not exceed twenty-four hundred pesos.

(b) Temporary officers and employees who have served the Government for at least five years before the approval of this Act, shall be entitled to gratuity at the rate of one month's salary or its equivalent in the case of those paid by the hour, by the day or by the week for each year of service and the proportionate amount of any fraction thereof, but not to exceed twenty-four months in the case of those whose compensation exceeds twelve hundred pesos a year, PROVIDED, That in the case of

those who receive twelve hundred pesos a year or less the total retirement gratuity to which they may be entitled shall not exceed twenty-four hundred pesos.

(c) Temporary officers and employees who have served the Government less than five years before the approval of this Act, shall be entitled to a gratuity at the rate of half a month's salary or its equivalent in the case of those paid by the hour, by the day or by the week for each year of service and the proportionate amount of any fraction thereof.

Persons serving on a part time basis shall not be entitled to the gratuities authorized in this Act.

SECTION 2. In separating or retiring employees under the provisions of this Act, Department Heads shall give preference to officers or employees who, on account of their advanced age or of any physical or mental defect, are not fit to render further efficient service in the positions they occupy; PROVIDED, HOWEVER, That the appointees of the Governor-General may be retired by the Department Head concerned with the approval of the Governor-General.

SECTION 3. The gratuity provided in section one hereof shall be based on the highest basic rate of salary received and shall be paid monthly at the rate of thirty-three and one-third per centum of the monthly salary of the officer or employee, with the exception of those who will be entitled to a gratuity of one month's salary or less who shall totally be paid immediately upon separation: PROVIDED, HOWEVER, That with the approval of the Head of

the Department in which such officer or employee was serving upon separation or retirement, the said officer or employee may, subject to such rules and regulations as may be approved by the Secretary of Finance, sell, transfer or cede his right to the gratuity payments, to any investment fund under the control of the Insular Government, or to any bank duly authorized to transact business in the Philippine Islands: PROVIDED, FURTHER, That the gratuity provided for in this Act shall not be attached or levied upon execution.

SECTION 4. If an officer or employee separated or retired under the provisions of this Act is entitled to the benefits of Act Numbered Twenty-five hundred and eighty-nine, as amended, or to the benefits of any law or special pension fund created by authority of the Philippine Legislature, such as the Teacher's Retirement and Disability Fund by virtue of Act Numbered Three Thousand and fifty, as amended, the Pension and Retirement Fund of the Philippine Health Service under Act Numbered Thirty-one hundred and seventy-three, and the Pension and Retirement Fund of the Philippine Constabulary under Act Numbered Sixteen hundred and thirty-eight, he shall have the privilege to choose between the benefits prescribed in said Acts and those herein provided for; but in no case shall the payment of gratuity under more than one Act be authorized. If he chooses the benefits granted by the special pension or retirement Act, he shall be retired under the provisions of said Act if he is entitled to its benefits; in case he prefers the gratuity provided for in this Act, he shall be granted such gratuity, and the

amounts deducted from his salary as contributions to the Teacher Retirement and Disability Fund, the Pension and Retirement Fund of the Philippine Health Service, or the Pension and Retirement Fund of the Philippine Constabulary, as the case may be, shall be refunded to him, and in the case of the Teacher's Retirement and Disability Fund, said fund shall also return to the general funds of the Insular Government the corresponding direct contributions made to said special fund by the Insular Government: PROVIDED, HOWEVER, That Judges and Auxiliary Judges of First Instances and Public Service Commissioners who may be retired under the provisions of this Act, shall be entitled to the benefits provided for in Act Numbered Twenty-five hundred and eighty-nine, as amended, the provisions of this Act or any other Act to the contrary notwithstanding.

SECTION 5. In case of the death of an officer or employee after separation or retirement from the service under the provisions of this Act, any gratuity or part thereof due to him shall be paid to his legitimate heir or heirs, or, if discounted under the provisions of section three hereof, then to the investment fund of the Insular Government or to the bank to which the right to such gratuity may have been ceded.

SECTION 6. A person separated or retired under the provisions of this Act may be reappointed to any position in the Insular Government but by accepting such reappointment he shall forever waive all future gratuity payments and or claims under the provisions of this Act. Similarly, a retired person who, under the revisions of section three hereof, has discounted the gratuity payments to which he is entitled shall,

upon his reappointment to any position in the Insular Government, first refund to the investment fund or the bank to which he has ceded his right to the gratuity the total discounted value of all the gratuity payments which he would not yet have received had these been made to him in monthly instalments.

SECTION 7. The Justices of the Peace who must relinquish office during the year nineteen hundred and thirty-three in accordance with the provisions of Act Numbered Thirty-eight hundred and ninety-nine, shall also be entitled to the gratuities provided for in this Act.

SECTION 8. The offices or positions vacated by the separation or retirement of officers and employees with gratuities paid under the provisions of section one of this Act shall not be filled and shall be considered abolished ipso facto, except those specifically created by law, and those of chief clerk, chief of division, and lighthouse keeper.

SECTION 9. Nothing herein provided shall be construed as entitling to the benefits of this Act those officers and employees of the Insular Government who voluntarily resign from the service due to the reduction of their compensation or to transfer from one office to another by virtue of the provisions of any Act, or to the abolition of double compensations to which they were formerly entitled, or to any cause not provided herein.

SECTION 10. The necessary sum to carry out the purposes of this Act is hereby appropriated out of any funds in the Insular Treasury not otherwise appropriated.

SECTION 11. This Act shall take effect as of January first, nineteen hundred and thirty-three: PROVIDED, That the provisions hereof shall be applicable to such officers and employees of the Insular Government as were separated from the service during the year nineteen hundered and thirty-two as a result of the operation of Executive Order No. 369 of the Governor-General and of his Memorandum Order issued on April eight, nineteen hundred and thirty-two.

SECTION 12. If for any reason, any section or provision of this Act is disapproved by the Governor-General or is challenged in a competent court and is held to be unconstitutional or invalid, none of the other sections or provisions hereof shall be affected thereby and such other section and provisions shall continue to govern as if the sections or provision so disapproved or held invalid had never been incorporated in this Act.

Approved, section 7 excepted, February 21, 1933.

Examples of items in acts of the Philippine Legislature vetoed by the Governor General.

Act 3145 (1924)

Section 1 * * *

"(c) For aid for the completion and repair of high schools in the regular provinces $125,000.00

"(d) For aid for the construction of high schools in the special provinces of Palawan and Batanes $25,000.00

* * * *

"(y) For the construction, maintenance, and operation of radio, cable, and telegraph lines, and for the purchase and installation of apparatus and machinery, including wiring: *Provided*, That part of this sum, not to exceed $30,000, shall be set aside for the construction and operation of a radio station in the Island of Lubang, Province of Mindoro ..... $150,000.00"

Act 3213 (1924)

Section 1 * * *

"(f) For the completion of Surigao High School $20,000.00

"(g) For aid to municipalities for the construction, completion or repair of the following school buildings:

"Abra

* * * (3) For aid in the construction of Mudit, Dolores, Elementary School ..... $750.00 * * *

"Albay

* * * (2) For the reconstruction or improvement of Guinobatan Agricultural School * * * $12,000.00

"(3) For the completion of Balogo School, Oas $1,000.00

* * * *

"(x) For the maintenance and improvement, including dredging works, as well as for the construction of piers at the following ports in the regularly organized provinces:

"* * * 11. For the construction of Calapan seashore protection, Province of Mindoro $20,000.00

"13. For the construction of Valladolid sea wall protection, Province of Occidental Negros $15,000.00

* * * *

"Sec. 4. The funds appropriated by Act Numbered Three thousand one hundred thirteen, section one, paragraph (*h*), and reallotted under the provisions of section three of said Act, under date of February twenty-second, nineteen hundred twenty-four, as follows, are hereby made available and their release is also hereby authorized:

"Improvement and repair of Cabatuan San Miguel Road, Iloilo	P 5,000.00
Improvement and repair of the Santa Barbara-San Miguel Road, Iloilo	5,000.00
Construction of the Ajuy-Barotac Viejo Road via Culasi, Iloilo	13,000.00
Improvement and repairs of the Dumangas-Barotac Nuevo Road, Iloilo	5,000.00
Construction of the Tigbauan-Leon Road via Cordoba, Iloilo	6,000.00
Improvement and repairs of the Cabatuan-Maasin Road, Iloilo	3,000.00

Improvement and repairs of the Maasin-Alimodian Road, Iloilo	3,000.00
Total	47,000.00

"Sec. 5. The fund appropriated by Act Numbered Thirty one hundred thirteen, section one, paragraph (*m*), authorized and allotted under date of April twenty-fourth, one thousand nine hundred twenty-four, under the provisions of section three of the same Act, is hereby made available as follows:

"For the construction of river banks protection at Igbaras, Province of Iloilo	P20,000.00"

Act 3217 (1924)

Section 1 * * *

"A.—SENATE

"120. Supplementary force including personnel of the Legislative Reference Office	28,820.00
* * * *	
"125. Other services, including the quota of the Philippines as members of the Interparliamentary Union, half of which is to be paid by each of the Houses of the Legislature	P28,608.00

"B—HOUSE OF REPRESENTATIVES

"120. Supplementary force including personnel of the Office of Legislative Reference	36,659.00

"129. Other services, including the quota of the Philippines as member of the Interparliamentary Union, half of which is to be paid by each House of the Legislature ..... 19,824.00"

Act 3227 (1925)

Section 1 * * *

"Sec. 3. No vacancy in any position for which funds are appropriated in this Act, occurring after the same has taken effect, shall be filled without the approval of the Secretary of Finance, who shall authorize this only when the appointment is rendered absolutely necessary by the demands of the public service: *Provided, however,* That appointments submitted to the Senate for confirmation and appointments of employees of the Houses of the Legislature shall not be governed by this provision."

Act 3340 (1926)

"Sec. 4. Any appropriation made in this Act for a position or employment shall be available exclusively for the specific position for which it has been made and shall not be used for any other position, although the latter be of the same nature as the former."

Act 3355 (1927)

"Sec. 3. No amount from any of the appropriations for maintenance and repairs and purchases of supplies and materials in any Bureau or Office of the Government shall be used to pay for repairs and maintenance and purchases of supplies and materials made during the year 1927."

Act 3670 (1929)

Section 1 * * *

"Sec. 4. Appropriations for the construction of schools not in excess of three thousand pesos shall be transferred to the municipality concerned and disbursed subject to the approval of the division superintendent of schools, without necessity of the intervention of the Bureau of Public Works."

Act 3912 (1931)

Section 1 * * *

"(i) For the investigation and survey of special road and bridge projects to be designated by the Secretary of Commerce and Communications, including the purchase, operation and maintenance of test boring apparatus, *Provided*, That P5,000 of this amount shall be spent for the investigation and survey of the Capas, Tarlac-Iba, Zambales interprovincial road..... 15,000.00 (Proviso was vetoed.)

"(q) For the construction of insular, provincial, and municipal waterworks, drainage and sewer system projects, whenever the province or municipality concerned shall appropriate funds to cover the cost of one-third of the work prior to the release of the Insular aid authorized by this Act: *Provided*, That no municipality shall be entitled to receive more than P25,000 a year as aid: *Provided, further*, That in the case of a provincial or municipal project benefiting or covering two or more municipalities, each municipality concerned shall be entitled to said P25,000 aid: *And provided finally*, That the sum of P10,000 shall be released for the construction of Bucay Waterworks, Abra, and P18,000 for the construction of the Bantayan Waterworks, Cebu, the above requirements notwithstanding;

the sum of P25,000 shall be set aside for the construction of Malasiqui Waterworks, Pangasinan; the sum of P8,000 for the construction of Santa Maria Waterworks, Laguna; the sum of P12,000 for the extension of the Waterworks system to the College of Agriculture at Los Baños, Laguna; the sum of P20,000 for the construction of Cabugao Waterworks, Ilocos Sur, and P25,000 for the construction of Narvacan Waterworks, Ilocos Sur P350,000.00

Total available for artesian wells and waterworks..... 480,000.00

(Final proviso was vetoed.) * * *

"Sec. 2. Item 5, paragraph (*e*), subsection A, section 1 of Act Numbered Thirty-eight hundred and thirteen for the Province of Oriental Negros, Public Works Act for nineteen hundred thirty-one, is hereby repealed and transferred to item 4, paragraph (*e*), subsection A, section 1, to read as follows: For the Larena Elementary School, Oriental Negros, fourteen thousand pesos (P14,000). * * *

"Sec. 4. The sums appropriated in paragraphs (*a*), (*i*), (*ll*), (*m*), (*n*), (*p*), (*q*), (*s*), (*u*), (*v*), (*w*), and (*x*) shall be distributed in the discretion of the Secretary of Commerce and Communications, but those appropriated in the other paragraphs shall be available for immediate expenditure by the Director of Public Works: *Provided, however,* That in all construction works to be undertaken by the Government that require the use of cement, it shall be compulsory, the provisions of existing laws to the contrary notwithstand, the use of cement manufactured by companies financed by the Government, except in those cases in which for reasons of cost, price and transportation, the use of other cement manufactured in the Philippines as verified by the Insular Auditor is more advantageous."

SUPREME COURT OF THE UNITED STATES.

No. 214.—October Term, 1936.

Juan Bengzon, Petitioner,
vs.
The Secretary of Justice and Insular Auditor of the Philippine Islands.

On Writ of Certiorari to the Supreme Court of the Commonwealth of the Philippines.

[January 4, 1937.]

Mr. Justice Sutherland delivered the opinion of the Court.

This suit was brought by petitioner against respondents in the Court of First Instance of Manila, for a writ of mandamus commanding respondents to approve and order payment of a gratuity awarded to him by section 7 of the Retirement Gratuity Law (Act 4051, Laws of the Philippines), notwithstanding the veto of that section by the Governor-General. The Court of First Instance, upon respondents' demurrer, dismissed the action. Upon appeal, the Supreme Court of the Commonwealth of the Philippines affirmed that decision, holding that the veto by the Governor-General of § 7 was authorized by § 19 of the Organic Act of August 29, 1916, 39 Stat. 545, 551. — Phil. —. Because of the importance of the question, we granted certiorari. 299 U. S. —.

The Retirement Gratuity Law contains twelve sections. It is entitled, "An Act to provide for the payment of retirement gratuities to officers and employees of the Insular Government retired from the service as a result of the reorganization or reduction of personnel thereof, including the justices of the peace who must relinquish office in accordance with the provisions of Act numbered Thirty-eight Hundred and Ninety-nine, and for other purposes."

Section 1 classifies the officers and employees, separated or retired from the service, who shall be entitled to a gratuity, and provides a method for ascertaining the amount. Section 2 accords preferences in the case of certain officers and employees; § 3 fixes the basis for the computation of the gratuity; § 4 allows an officer or employee to choose between the gratuity granted by the act and gratuities conferred by other acts; § 5 provides for succession in respect of unpaid gratuities in case of death; and § 6 authorizes

a conditional reappointment of persons separated or retired under the act.

Section 8—passing for the present § 7—abolishes the offices and positions vacated by the separation or retirement of officers and employees, with certain exceptions. Section 9 excepts from the benefits of the act designated officers and employees. Section 10 provides, "The necessary sum to carry out the purposes of this Act is hereby appropriated out of any funds in the Insular Treasury not otherwise appropriated." Section 11 fixes the effective date of the act; and § 12 provides that if any provision of the act be disapproved by the Governor-General or be held unconstitutional or invalid by a competent court, none of the other sections or provisions of the act shall be affected thereby.

The Governor-General returned the act with the endorsement, "Approved, section 7 excepted, February 21, 1933." Section 7, thus vetoed, reads:

"The Justices of the Peace who must relinquish office during the year nineteen hundred and thirty-three in accordance with the provisions of Act Numbered Thirty-eight hundred and ninety-nine, shall also be entitled to the gratuities provided for in this Act."

Section 19 of the Organic Act, *supra,* confers upon the Governor-General the usual and general veto power. That is to say, it authorizes him, if he does not approve a bill or joint resolution passed by both houses of the legislature, to "return it with his objections to that house in which it shall have originated"; and it then can become law only if upon reconsideration two-thirds of the members elected to each house shall agree to pass it. This general power requires the veto to include the whole bill. But the section contains an exception, namely—

"The Governor General shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he does not object."

This exceptional power, it will be seen, is limited to appropriation bills; any other kind of legislation being controlled by the general rule. And its exercise is restricted to the disapproval of a particular item or particular items of such a bill. The precise question for consideration, therefore, is—did the bill which became Act 4051 constitute an appropriation bill; and, if so, was § 7, within the meaning of the foregoing provision of the Organic Act, an item of such bill?

It first is to be observed that the title of the act in no wise suggests that what follows is an appropriation bill; and an examination of the act itself discloses that, with the exception of § 10, the bill itself proposed only general legislation. Eliminating § 10, the remaining eleven sections could stand as a generic act of legislation, leaving the specific matter of appropriation to be dealt with by later enactment. The term "appropriation act" obviously would not include an act of general legislation; and a bill proposing such an act is not converted into an appropriation bill simply because it has had engrafted upon it a section making an appropriation. An appropriation bill is one the primary and specific aim of which is to make appropriations of money from the public treasury. To say otherwise would be to confuse an appropriation bill proposing sundry appropriations of money with a bill proposing sundry provisions of general law and carrying an appropriation as an incident. The Supreme Court of Texas in *Fulmore* v. *Lane,* 104 Tex. 499, 512, clearly pointed out the distinction between the veto power in respect of a bill in the general sense and an appropriation bill. "Nowhere in the Constitution," the court said, "is the authority given the Governor to approve in part and disapprove in part a bill. The only additional authority to disapproving a bill in whole is that given to object to an item or items where a bill contains several items of appropriation. It follows conclusively that where the veto power is attempted to be exercised to object to a paragraph or portion of a bill other than an item or items, or to language qualifying an appropriation or directing the method of its uses, he exceeds the constitutional authority vested in him, and his objection to such paragraph, or portion of a bill, or language qualifying an appropriation, or directing the method of its use, becomes noneffective."

If the Governor-General had power under the foregoing clause of § 19 of the Organic Act to veto § 7 of the gratuities bill, he had like power to veto § 2, granting preferences to certain classes of officers and employees; or § 4, allowing a choice between the gratuity granted by the act under review and a gratuity granted by some other act; or § 5, according a right of succession to unpaid gratuities in case of death; or § 6, providing for conditional reappointment of persons separated or retired under the act; or to veto as many of them as he saw fit. No more than any of the designated sections, does § 7 constitute an item of appropriation.

All of them are distinct parts of an act of general legislation. The elimination of any by an exercise of the veto power, with the going into effect of the remaining portions of the bill as a consequence (if the veto be not overruled by a two-thirds vote of each house), would result in the enactment of a general law in an emasculated form not intended by the legislature and against the will, perhaps, of a majority of each house. This would not be negation of an item or items of appropriation by veto but, in effect, affirmative legislation by executive edict.

So, even if it be conceded that the bill could be characterized as an appropriation bill, § 7 is not an "item" within the meaning of § 19 of the Organic Act. An item of an appropriation bill obviously means an item which in itself is a specific appropriation of money, not some general provision of law which happens to be put into an appropriation bill. Provisions granting power to the executive to veto an item or items of an appropriation bill are to be found, in various forms of expression, in many of the state constitutions. Their object is to safeguard the public treasury against the pernicious effect of what is called "log-rolling"—by which, in order to secure the requisite majority to carry necessary and proper items of appropriation, unnecessary or even indefensible items are sometimes included.

Section 73 of the Constitution of Mississippi provides that the Governor may veto parts of any appropriation bill; and although "parts" would seem to be a word of wider application than the words "item or items", the Supreme Court of that state, *State* v. *Holder*, 76 Miss. 158, 180-181, held that it was not designed to enable the Governor to veto legislation carried in an appropriation bill. "Section 73", the court said, "was framed with a view of guarding against the evils of omnibus appropriation bills, securing unrighteous support from diverse interests, and to enable the governor to approve and make law some appropriations, and to put others to the test of securing a two-thirds vote of the legislature as the condition of becoming law. Thus viewed, section 73 is eminently wise, and will prove useful in practice as corrective of an evil, but if a single bill, making one whole of its constituent parts, 'fitly jointed together,' and all necessary in legislative contemplation, may be dissevered by the governor, and certain parts torn from their connection may be approved, and thereby become law, while the other parts, unable to secure a two-thirds vote in both

houses, will not be law, we shall have a condition of things never contemplated, and appalling in its possible consequences."

The court below attached importance to § 12 of the act under review, which provides that if any section or provision of the act *be disapproved by the Governor-General* or held to be unconstitutional or invalid by a competent court, none of the other sections or provisions should be affected thereby. That court viewed the italicized clause of this provision as indicating that the legislature intended the act "to be an appropriation measure with various items", since it anticipated the possibility of a partial veto. Just why this clause was inserted by the legislature does not appear. It may have been merely formal, or inserted out of abundance of caution. Certainly it could not have such force as to convert what plainly was a proffer of general legislation into an appropriation bill. Although the title is only a formal part of an act, and may be resorted to as an aid to the meaning of a statute only in cases of doubt, *Hadden* v. *The Collector,* 5 Wall. 107, 110, the title of the present act, at least, has the effect of overcoming such extrinsic aid as the clause relied upon otherwise might afford to the construction of the act by the court below. If the Philippine Legislature regarded the bill as an appropriation bill, it is strange that the words by which that body described and characterized its own proposed act afford no hint to that effect. Compare *Holy Trinity Church* v. *United States,* 143 U. S. 457, 462-463.

We conclude that the Governor-General was without power to separately veto § 7 of the Retirement Gratuities Act. The judgment of the lower court must be reversed, and the cause remanded for further proceedings not inconsistent with the foregoing opinion.

It is so ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.